**URBAN AGENDA FOR THE EU**

Partnership for Innovative and Responsible Public Procurement

Final Draft ACTION PLAN - ANNEX

(v2.0, 17.05.2018)

\*\*\* The Pact of Amsterdam states that the Action Plan "can be regarded as non-binding". Therefore, the actions presented in this Action Plan are not compulsory. \*\*\*

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# ACTION 2 Legal Handbook Innovative Public Procurement

## Introduction

This Annex presents the outcomes of the desk-based evidence-gathering exercise conducted in order to underpin *Action 2 “Legal Handbook Innovative Public Procurement”* in the draft action plan of the Urban Agenda for the EU - Partnership for Innovative and Responsible Public Procurement. The following sections briefly explain the objectives of the research for evidence, the methodology followed (notably the languages and types of documents researched, as well as the approach to categorising and summarising basic characteristics of the relevant documents found), and then presents the findings - covering what types of the documents have been published, where and by whom, and the legal issues dealt with.

### Objectives

The overall goal of the proposed Action 2 of the Partnership, to be led by Munich[[1]](#footnote-1), is to compile a Legal Handbook on conducting innovative public procurement, as a useful tool for practitioners in the cities, helping them understand and properly address issues of legal certainty and risks in conjunction with their innovative public procurement strategy, and planned or ongoing procedures. As it was established in the preparatory phases of the Partnership’s work, a lack of knowledge and the existing open questions of legal certainty are the main bottlenecks that hinder cities in the uptake of PPI.

To substantiate subsequent work, as well as to clarify whether the goal of Action 2 is justified in the first place, a search for evidence has been launched on what legal handbooks and legal guidance documents to PPI in Europe are already existing. Consequently, the objectives of this evidence-gathering exercise were:

* to verify whether a legal handbook on European PPI that is already sufficiently ‘fit-for-purpose’ is already existing (hence rendering Action 2 unnecessary); and, if this was not the case
* to collect useful source material that could support the development of the Partnership’s handbook.

### Methodology

The methodology applied to furnish the evidence for the work of the Partnership was based on a desk research of European legal guidance to PPI. Specifically,

* A web search was undertaken to find a broad set of relevant documents across Europe – via searching Google for specific keywords and terms[[2]](#footnote-2) in several European languages, as well as checking referenced material in already identified documents. The search was geared towards finding most of the comprehensive guidance documents available, and to complement this with example material addressing specific legal issues.
* The documents were recorded in a database, indicating: title, publisher or author, year of publication, language, volume, web link. The documents were also categorised according to their type or the approach they take, which is used to structure the subsequent section. This database (in Excel) is available in a separate file.
* The key legal issues pertaining to procurement of innovation discussed in the documents were extracted.
* Ultimately, the findings were summarised in this Annex, presenting the guides by document category, as well as providing the list of legal issues discussed.

The stocktaking of existing documents has covered both the national and EU level. The languages used in the search were English, French, German, Spanish, Finnish, Swedish, Hungarian and Romanian. The focus of the search was put on recently published documents that were based, or took into account, the new European Public Procurement Directives. The subsequent sections present the findings.

## Relevant documents found

Altogether, the mapping has identified and categorised to date 56 relevant documents. Most of these have been written for a European audience (in English), presenting and interpreting the provisions of the EU Directives on the procurement of innovation without national specificities. National resources (mostly in the national language, in a few cases in English) have been mapped from Austria, Finland, France, Germany, Netherlands, Poland, Spain, Sweden, and the UK. In addition, three sector-specific guides for procuring innovation have been published as part of the PPI2Innovate project separately for CZ, HR, HU, IT, PL, SI, customised to the context of participating countries.

The length of the documents typically range from 20 to 100 pages. The target audience may be experienced practitioners or even public procurement lawyers, but often politicians, decisionmakers and other non-technical audiences: this is also closely linked to the level of detail of the discussions.

Following the data collection, the documents were grouped in the following five categories:

* General guidance
* Practical guides
* Legal guides
* Legal notes and opinion
* Books and studies

The subsequent presentation of the documents mapped is structured along these categories.

### General guidance

The first category of identified documents concerns general guidance to public procurement of innovation, either at EU or at national level. A number of guides are short introductory documents aimed not necessarily at practitioners but at politicians, decision-makers, bidders, stakeholders interested in strategic aspects of procurement. They are helpful to raise awareness, to explain the benefits, to present the approaches and applicable procedures, possible pitfalls. There are also in-depth guides that discuss the topic to a much greater level of detail then introductory guides. These documents are targeting practitioners, and typically offer a mix of background knowledge and practical know-how, but they are not specifically designed to give detailed legal advice or to guide practitioners through the procedures step-by-step.

The documents mapped, presented in the table below, include two relatively detailed authoritative guides from the Commission (the very recent 2018 ‘Guidance on innovation procurement’ and the publication ‘Public Procurement as a Driver of Innovation in SMEs and Public Services’). Their purpose is to introduce the concept, the benefits, and the tools and methods to attract innovation. The ‘Public procurement as policy instrument for innovation’ by CEER follows a similar approach. A report prepared within the framework of the OMC-PTP project gives a comprehensive presentation of public procurement of innovation.

Short or more detailed introductory material has been published by government departments or agencies in Denmark, France, Ireland, Sweden and the UK, as well as by the Austrian Institute of Technology, and French lawyers.

Table 6 General guidance to procurement if innovation mapped

|  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- |
| **Level** | **Country** | **Publisher** | **Title** | **Year** | **Language** | **Pages** |
| EU |  | European Commission | Guidance on innovation procurement | 2018 | English | 47 |
| EU |  | European Commission | Public Procurement as a Driver of Innovation in SMEs and Public Services | 2014 | English | 56 |
| EU |  | Centre for European Economic Research | Public procurement as policy instrument for innovation | 2018 | English | 42 |
| EU |  | OMC-PTP project | Exploring Public Procurement as a Strategic Innovation Policy Mix Instrument | 2009 | English | 81 |
| Nat | UK | Department for Business Invocation and Skills | Driving Innovation through Public Procurement | 2009 | English | 24 |
| Nat | IE | Department for Enterprise, Trade and Employment | Buying Innovation - The 10 Step Guide to SMART Procurement and SME Access to Public Contracts | 2008 | English | 32 |
| Nat | FR | Direction générale des entreprises  | La commande publique: un marché pour les innovations | 2015 | French | 12 |
| Nat | FR | Ministère de l'Économie et des Finances, Ministère du redressement productif  | Conjuguer au present l'innovation avec les politiques d'achat public | 2013 | French | 46 |
| Nat | FR | Cabinet Parme Avocats | Le parteneriat d'innovation, modes d'emplois | 2018 | English | 10 |
| Nat | FR | Julien Moiroux | La commande publique autrement. Comment Concrétiser des projects urbains durables et innovants | 2014 | French | 4 |
| Nat | FR | Charles Cohen | Les achats publics à l'assaut de l'innovation | 2016 | French | 4 |
| Nat | AT | Austrian Institute of Technology | Innovationsfördernde öffentliche Beschaffung - Innovationspolitische Optionen | 2009 | German | 28 |
| Nat | DK | Danish Council for Public Private Cooperation | Innovationsfremmende Inkop | 2013 | Danish | 39 |
| Nat | SE | Vinnova, Swedish Governmental Agency for innovation systems | Public procurement as a driver for innovation and change | 2006 | English | 100 |

### Practical guides

This category of guidance documents offers practical know-how, not specifically legal in nature, but including legal considerations. They may be introductory step-by-step guides covering the entire public procurement procedures, or more detailed material on certain issues (such as risk management) for more advanced practitioners.

The list compiled during the mapping exercise contain the Commission’s detailed ‘Public procurement guidance for practitioners’, which has been developed for procurers using European Structural and Investment Funds and hence is about procurement in general; the ‘Draft PCP Manual - A practical guide to PCP’ put together as part of the EU-funded PROGR-EAST project; as well as a report on ‘Best Practices on public procurement of innovative solutions’ from another European project. Furthermore, practical guides at the EU level have been found on innovation procurement of medical technology, on risk management in the procurement of innovation (a comprehensive guide from the Commission and a short guide from the Procurement for Innovation Platform), as well as on the use of standards in innovative procurement, elaborated under the STEPPIN project.

Selected practical guides at the national level include ‘Finding and Procuring Innovative Solutions - Evidence-based practical approaches’ from the UK government, a German paper giving a brief step-by-step guide to innovative procurement, three guides for procuring innovation in the energy, health and ICT sectors from the PPI2Innovate project, customised to the situation to the six participating countries (CZ, HR, HU, IT, PL, SI), and a Swedish guide to sustainable public procurement.

Table 7 Practical guides to procurement if innovation mapped

|  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- |
| **Level** | **Country** | **Publisher** | **Title** | **Year** | **Language** | **Pages** |
| EU |  | European Commission | Public procurement guidance for practitioners | 2018 | English | 136 |
| EU |  | PROGR-EAST project | Draft PCP Manual - A practical guide to PCP | 2012 | English | 71 |
| EU |  | PAPIRUS project | Best Practices on public procurement of innovative solutions | 2014 | English | 49 |
| EU |  | Advamed, CMS | Good practices for the procurement of innovative medical technology | 2014 | English | 34 |
| EU |  | European Commission | Risk management in the procurement of innovation | 2010 | English | 130 |
| EU |  | Procurement for Innovation Platform | Introduction to Risk Management in the Public Procurement of Innovation | 2014 | English | 10 |
| EU |  | Europe Innova | Main experiences and recommendations from STEPPIN under the Europa INNOVA Standards network initiative | 2008 | English | 64 |
| Nat | UK | Department for Innovation, Universities and Skills | Finding and Procuring Innovative Solutions - Evidence-based practical approaches | 2006 | English | 77 |
| Nat | DE | Bundesministerium für Wirtschaft und Energie, KOINNO | Impulse für mehr Innovationen im öffentlichen Beschaffungswesen: Leitfaden | 2014 | German | 56 |
| Nat | CZ, HR, HU, IT, PL, SI | PPI2Innovate | PPI2Innovate tool - Energy | 2017 | Hungarian (and CZ, HR, IT, PL, SI) | 172 |
| Nat | CZ, HR, HU, IT, PL, SI | PPI2Innovate | PPI2Innovate tool - Health | 2017 | Hungarian (and CZ, HR, IT, PL, SI) | 171 |
| Nat | CZ, HR, HU, IT, PL, SI | PPI2Innovate | PPI2Innovate tool - ICT | 2017 | Hungarian (and CZ, HR, IT, PL, SI) | 167 |
| Nat | SE | TCO certified, Fairtrade Sweden, EU ecolabel | Sustainable public procurement from rhetoric to practice | 2016 | English | 25 |

### Legal guides

The mapping exercise aimed at identifying a good proportion of available legal guides to the procurement of innovation. ‘Legal guides’ were defined in this research as documents specifically discussing the legal know-how of procurement procedures and specific issues. This category contains the documents that are the closest to the concept of the planned Legal Handbook under Action 2.

The list of identified documents contain several guides covering the EU level, but also guides prepared by national actors for a given country legal context.

At the EU level, the most relevant legal guide to support the development of the Legal Handbook is probably Eafip’s PPI Toolkit (Module 3), which gives a step-by-step approach to innovation procurement, as well as a guide to joint procurement. Although the level of detail may be insufficient, the practical and step-by-step approach make the toolkit useful for practitioners.

The identified support documents at the EU level further include comprehensive legal guides to relevant procedures (‘Competitive dialogue’) or to joint procurement. Shorter guidance documents cover either the procurement of innovation as such (occasionally within a more general framework of European public procurement law), or specific issues such as IPR.

Legal guides at national level have been mapped in Finland, France, Germany, Spain, Sweden, and the UK. Some of the documents (Finland, Spain, Sweden) are specifically on the procurement of innovation, while others (France, Germany, UK) deal with other strategic aspects of public procurement - sustainable or socially responsible public procurement – they have been added to the mapping because they were developed for guiding the strategic procurement of cities, the target group for the Legal Handbook.

This category of documents also includes very detailed comprehensive handbooks for public procurement lawyers on procurement procedures in general. Two examples from Germany are the ‘Handbuch Vergaberecht’ and the ‘juris PraxisKommentar Vergaberecht’. The books are about all of public procurement, but as such they also cover specific procedures and many of the issues pertaining to the procurement of innovation.

Table 8 Legal guides mapped

|  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- |
| **Level** | **Country** | **Publisher** | **Title** | **Year** | **Language** | **Pages** |
| EU |   | European Assistance for Innovation Procurement | Toolkit - Module 3 - legal/operational module | 2018 | English | 94 |
| EU |   | Michael Burnett and Martin Oder | Competitive dialogue | 2009 | English | 212 |
| EU |  | Roberto Caranta & Martin Trybus (eds) | The Law of Green and Social Procurement in Europe | 2010 | English | 330 |
| EU |  | Ius Publicum Network Review | Joint procurement and innovation in the new EU directive and in some EU-funded projects | 2014 | English | 32 |
| EU |  | CMS | Guide to the EU public procurement rules | 2017 | English | 36 |
| EU |  | Geo Quinot | Innovation, state contracting and public procurement law | 2015 | English | 21 |
| EU |  | Procurement for Innovation Platform | Introduction to intellectual property rights in Public Procurement of Innovation | 2015 | English | 14 |
| Nat | ES | Ministerio de Economía y Competitividad | Guía 2.0 para la compra pública de innovación | 2015 | Spanish | 68 |
| Nat | SE | Lorentz Reige, Stockholms universitet | Innovation i offentlig upphandling - Nya och gamla förfaranden för upphandling av innovation | 2015 | Swedish | 65 |
| Nat | DE | Umweltbundesamt | Rechtsgutachten umweltfreundliche Beschaffung | 2014 | German | 113 |
| Nat | UK | Anthony Collins Solicitors | Social Value and Public Procurement - A Legal Guide | 2014 | English | 30 |
| Nat | DE | Gabriel / Krohn / Neun | Handbuch Vergaberecht | 2017 | German |  |
| Nat | DE | juris | PraxisKommentar Vergaberecht | 2013 | German | 1500 |
| Nat | FI | Pesu, Jarkko | Innovaation Käsite Hankintalainsäädännössä ja Valtiontukisäännöksissä (The concept of innovation in procurement law and state aid rules) | 2018 | Finnish | 24 |
| Nat | FR | Advancity | Innovation et villes durables: note d'approfondissement juridique | 2015 | French | 36 |
| Nat | DE | Deutscher Städtetag | Die Berücksichtigung sozialer Belange im Vergaberecht - Hinweise für die kommunale Praxis | 2010 | German | 33 |

### Legal notes/opinion

Short legal notes or opinions - published by experts, interest groups, and sometimes on legal blogs or the sites of law firms – supplement more comprehensive guides with a legal analysis of specific issues. They present and interpret law (incl. case law), sometimes within the framework of national contexts and concrete cases.

This category of legal support material was not in the focus of the mapping exercise, but they will be useful in compiling the content of the proposed Legal Handbook. A few examples found have been included in the table below.

The first three of the legal notes and opinions in this sample list are at EU level. The first one (‘Public Procurement Award Procedures in Directive 2014/24/EU’) reviews the changes to the Public Procurement Directives under different procedures, and discusses specifically possible issues with the competitive procedure with negotiation and innovation partnership. The second (‘The Link to the Subject-Matter: A Glass Ceiling for Sustainable Public Contracts?’) concerns procurers’ options with regard to the link of awarding criteria to the subject matter, with a focus on sustainability requirements, analysing the origins and justifications for this requirement – supported by ECJ case law. The third (‘Innovation Partnership in the New Public Procurement Regime – A Shift of Focus from Procedural to Contractual Issues?’) addresses Innovation Partnership, discussing inter alia practical legal issues such as IPR and termination risks or State Aid implications.

The last two notes have been written for a given national legal context. They deal with Innovation Partnerships; and the choice between competitive dialogue and the new competitive procedure with negotiation.

Table 9 Selected legal notes and opinions

|  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- |
| **Level** | **Country** | **Publisher** | **Title** | **Year** | **Language** | **Pages** |
| EU |  | Pedro Telles and Luke R.A. Butler | Public Procurement Award Procedures in Directive 2014/24/EU | 2014 | English | 46 |
| EU |  | Abby Semple | The Link to the Subject-Matter: A Glass Ceiling for Sustainable Public Contracts? | 2014 | English | 18 |
| EU |  | Marta Andrecka | Innovation Partnership in the New Public Procurement Regime – A Shift of Focus from Procedural to Contractual Issues? | 2017 | English | 15 |
| Nat | UK | Pedro Telles | Regulation 31 - Innovation partnership | 2016 | English | 3 |
| Nat | UK | Stephen Kenny | Delivering complex projects: competitive dialogue or competitive procedure with negotiation? | 2018 | English | 3 |

### Books and studies

Lastly, there is a host of books and studies on the law of public procurement. This category includes stand-alone studies and articles in books – analysing and explaining concepts, identifying and exploring legal issues with specific procedures used for the procurement of innovation; legal risks and uncertainties. They are not designed to be practical guides to public procurement practitioners, but are helpful for the development of the proposed Legal Handbook under Action 2.

The examples selected for the mapping exercise include: two study collections, of which the first one (‘Public procurement for innovation’) is specifically about the possibilities and practice of public procurement of innovation, albeit not exclusively from a legal perspective. Apart from presenting the benefits of PPI, it explains the relevant requirements and legal constraints, and success factors. The second book (‘Research Handbook on EU Public Procurement Law’) offers a comprehensive analysis of the law, jurisprudence and regulation of public procurement in the EU, including procurement of innovation in the section about strategic procurement. The book ‘Public Procurement and the EU Competition Rules’ discusses – inter alia - State Aid, albeit not specifically linked to innovation procurement.

The 2005 technical report ‘Innovation and public procurement. Review of issues at stake’ is somewhat outdated, but it gives a good overview of issues in innovation procurement, specifically of risk and uncertainty, presents case studies, and takes stock of the situation, actors and guidelines several EU member states and third countries. The study ‘Innovation-related Public Procurement as a Demand-oriented Innovation Policy Instrument’ offers a comprehensive overview of the role of public procurement in fostering innovation.

Two studies (‘Review of measures in support of public procurement of innovation’ and ‘Understanding public procurement of innovation: definitions, innovation types and interaction modes’) concern the practice of procurement of innovation, while the last item (‘Issues and tensions in public procurement of green innovation: a cross country study’) is exploring practical problems in the innovative procurement of sustainable solutions.

Table 10 Selected books and studies

|  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- |
| **Level** | **Country** | **Publisher** | **Title** | **Year** | **Language** | **Pages** |
| EU |  | Charles Edquist, Nicholas S. Vonortas, Jon Mikel Zabala-Iturriagagoitia, Jakob Edler | Public procurement for innovation | 2015 | English | 337 |
| EU |  | Christopher H. Bovis (ed.) | Research Handbook on EU Public Procurement Law | 2016 | English | 672 |
| EU |  | Jakob Edler, John Rigby, Max Rolfstam, Charles Edquist | Innovation and public procurement. Review of issues at stake | 2005 | English | 230 |
| EU |  | Albert Sanchez Graells | Public Procurement and the EU Competition Rules | 2015 | English | 584 |
| EU |  | Charles Edquist | Innovation-related Public Procurement as a Demand-oriented Innovation Policy Instrument | 2015 | English | 43 |
| EU |  | Elvira Uyarra | Review of measures in support of public procurement of innovation | 2012 | English | 29 |
| EU |  | Aalborg University, dr. Max Rolfstam | Understanding public procurement of innovation: definitions, innovation types and interaction modes | 2012 | English | 16 |
| EU |  | Centre for trade and economic integration | Issues and tensions in public procurement of green innovation: a cross country study | 2011 | English | 60 |

## The legal issues addressed

The identified documents often cover the basic legal requirements pertaining to conducting public procurement procedures (including the competitive dialogue or the competitive procedure with negotiation) under the European directives, from transparency to remedies. These are discussed appropriately in existing generic guidance to public procurement practitioners, hence they represent no information gap to be closed via Action 2.

On the other hand, a set of specific legal issues around the procurement of innovation are also addressed. These can be of interest for designing the content of the planned Legal Handbook. The key issues, structured into a number of topics, are as follows:

* Innovation Partnerships: issues discussed with regard to this new concept include, inter alia, how to ensure fair competition when establishing long-term innovation partnerships (the role of the new competitive procedure with negotiation), and proper regulation of risk sharing and ownership of IPR; contract termination, warranty and liability issues.
* Joint procurement (not exclusively related to procurement of innovation): problems around harmonising different rules and procedures, decisions to withdraw, risk sharing
* Open market consultation: legal issues may concern the transparency requirements, handling commercially sensitive information, uncertainties with the verification of market readiness of solutions to meet the procurer’s needs
* Functional requirements/performance based specifications: questions arise on how to formulate functional requirements (and maximum cost levels) instead of technical specifications that are non-discriminatory, clear and can adequately establish the liability of supplier. The role of standards is an additional consideration. This issue is also linked to the monitoring of suppliers and comparison/validation of results throughout a PCP or PPI procedure.
* Award criteria linked to the subject matter (not exclusively for innovation): the proper application of this principle which has been addressed by case law, balancing strategic aspects and non-discrimination and transparency of competition. In addition specific issues like including commercialisation plan as award criteria partly to avoid disproportionate financial and technical qualification requirements.
* Handling changes to consortia during PCP: ensuring a balance between flexibly allowing in new providers, and safeguarding the procurer’s interests and requirements, the protection of IPR, confidentiality, competition.
* Limitations on subcontracting
* Handling sequential contracts: the issue highlighted here concerns the approach to ensuring that in a complex procurement of innovation process (e.g PCP) involving several contracts, starting from a framework agreement to specific contracts for each phase, later contracts should be fit-for-purpose but shoud not introduce essential amendments to initial terms of the tender.
* Intellectual Property Rights: notably establishing ownership (at developer) and catering for cases when IPR would not be owned by the party generating the results; establishing royalty-free access of procurerfor own use; the right to grant non-exclusive licenses to third parties to exploit the results; requirements for the protection of IPR; the possible transfer of IPR; ensuring compensation for IPR rights according to market conditions (applicable techniques such as price reduction or ex-post royalties); call-back provisions if commercial exploitation fails or is not in line with the procurer’s principles. Also, the due ex-ante specification of IPR-related provisions in the tender documentation is addressed, this being subject matter of the contract.
* Compatibility with State aid rules, especially for procedures combining PCP with PPI (via innovation partnerships): how to apply in practice the provisions in the initial 2007 Commission Communication on PCP, as well as the 2014 State aid framework on RDI, most notably the provisions on market price (price reflecting the market value of the benefits received by the procurer and the risks taken by the providers), avidance of preferential treatment in ordering in the last phase commercial volumes of the solution, requirements for dissemination, royalty-free access to procurer and licenses to third parties.

## Conclusions

The mapping of legal guidance documents in Europe has not found an already existing legal handbook that would cover all the issues of procuring innovation in sufficient detail, with a practical approach geared towards public procurement practitioners in cities – as proposed under Action 2.

While comprehensive and practical material exists (most notably the eafip toolkit), these do not necessarily contain sufficient detail and examples, and are not maintained anymore. Detailed legal information on procedures and specific issues are also available, but these are scattered in their approach, come with different levels of detail, may or may not contain practical examples, and would need harmonisation. In addition, a number of guides that concern sustainable or socially responsible procurement have been found that could be used to design the outline and style of the Handbook.

The Handbook could be a comprehensive step-by-step guide, discussing what procurers need to do or consider in setting up their strategy and organisation, and then in the concrete pre-tendering, tender and post-tendering phases. The content focus, as planned by the Partnership, would be on how to address legal uncertainties and risks: the guides should not only explain the procedures and instrument, but also link in concrete legal issues and risks.

A possibility to consider for the output format of the Legal Handbook would be a ‘living’ online document, updated when necessary with new information (instead of being a traditional static text document). Users of certain legal handbooks were particularly praising the fact that they are regularly updated living documents.

An approach for an online document with multiple levels of detail (links leading from the core document to additional detail, or using pop-up sections) could also enhance the user-friendliness of the document. Presenting concrete examples/solutions worthwhile if they follow through the discussed steps in detail.

1. With the participation, status to date, of: Vantaa, Gabrovo, Italy, DG GROW, LUISS Labgov, Rome, CEMR, Nantes [↑](#footnote-ref-1)
2. These included, inter alia, generic terms such as ‘public procurement law’, ‘public procurement of innovation’, ‘legal handbook public procurement’, and also specific terms expected to be covered, such as ‘market consultation’, ‘competitive dialogue’, ‘innovation partnership’, ‘IPR’, ‘sensitive information’, ‘functional requirements’. [↑](#footnote-ref-2)