

PROCEDIN

Building Procurement Capability for Embedding and Driving Innovation

D3.1

Market Consultation Roadmap as a Legal Tool to Stimulate Innovation

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List of Abbreviations and Acronyms	
WP	Work package
UA IRPP	Urban Agenda of Innovative and Responsible Public Procurement
UA for the EU	Urban Agenda for the EU
Directive 2014/24/EU	DIRECTIVE 2014/24/EU OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 26 February 2014 on public procurement and repealing Directive 2004/18/EC

1. Introduction

1.1 Background

PROCEDIN is all about ‘networking networks’. A core premise of the project is that truly embedding innovation procurement into everyday procurement practice relies on a fundamental (re)orientation towards public procurement as a lever for strategic, systemic change. This relies on building capability within key groups in the ecosystem, but also building collective capacity for genuine collaboration at multiple levels – starting with specific innovations, contracts and projects, through leadership in organisations (buyer and vendor), local innovation ecosystems, and on to the pan-European network of actors working in a wide variety of ways on their shared goal of nurturing innovation through procurement. By centring on the very successful Urban Agenda on Innovative and Responsible Public Procurement (UA IRPP) partnership, and connecting this with platform organisations already successfully serving vendors across and beyond Europe (F6S and Tenderio), PROCEDIN leverages existing strengths and promotes new links.

In line with this premise, training materials are not being developed from scratch. A deliberate decision has been made to further enhance the resources already designed and successfully launched by the UA IRPP partnership, to stimulate collaboration and co-creation and to guarantee quality and ease of access. This means that for this deliverable, PROCEDIN contributes profoundly to the E-Learning module¹ developed by the UA IRPP on public procurement, by enhancing the module of the legal framework (Figure 1).

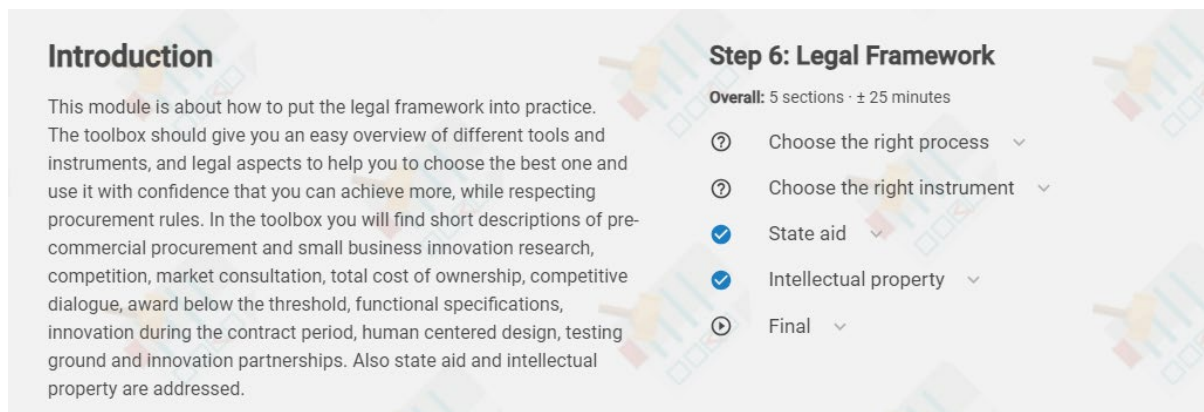


Figure 1. E-Learning UA IRPP: Legal Framework Module, Introduction

This E-Learning module presents a toolbox with different legal aspects that will help on how to achieve more with public procurement. It provides easy ways to use the different legal instruments and, thus, also how to stay within the lines of the legal framework. It presents criteria through infographics and best practices that help procurers find the right instrument for their procurement.

1.2 Aim

In work package (WP) 3: Legal Frameworks, PROCEDIN’s first objective is to deploy the legal framework of innovation and innovative procurement by advancing and developing the legal framework of the existing network of the UA IRPP. The second objective is to provide legal assistance

¹ E-Learning modules Urban Agenda Partnership on Innovative and Responsible Public Procurement: <https://uapp.maester.com/>

through the use of this advanced and developed legal framework, by organising webinars on legal framework topics. One way to reach these objectives is by developing and advancing legal roadmaps. By visualising legal information, it is possible to convey the information in an accessible way and to reduce the complexities. In line with this objective, this deliverable offers a market consultation roadmap as a legal tool to stimulate innovation.

The roadmap incorporates multiple purposes. Additional to making the information more easily understandable, the roadmap can be used for a range of trainings on the legal framework. Furthermore, the roadmap will be incorporated in the E-Learning module of the UA IRPP. The E-Learning module has a wide coverage and reaches actors all over Europe. This deliverable thus adds to decomplexifying the legal framework, trainings and the circulation of knowledge.

1.3 Market Consultation

The procedure of market consultation as the subject for this roadmap has multiple reasons. Directive 2014/24/EU introduces the market consultation tool, which aims to improve the efficiency of the public procurement process. It does so by facilitating the preparation of public procurement, by providing information to economic operators about the contracting authorities' plans and by preparing economic operators regarding the requirements of the employers.

Market consultations can also be used to research the market about the readiness and availability of innovative goods and services, as well as to research the market about the possibilities of upgrading existing goods and services, including improving processes for offering goods and services.

The UA for the EU identifies possibilities for better results through market engagement and E-Learning modules which contain the 'innovation broker' module. It presents the role of the innovation broker, where, however, the possibility of preliminary market consultations is not directly addressed as part of the tender preparation.

2. Method

In developing the market consultation roadmap, three aspects to deliver a coherent final product were taken into account: data, design and communication.

2.1 Data

The first stage focuses on data. The main question here is: what information should the roadmap convey? This stage is mainly about content. The roadmap functions as a legal tool and the data is thus derived of legislation concerning market consultation. Article 40 of Directive 2014/24/EU functions as base of the content. Chapter 3 will explain the content into more detail.

2.2 Design

The second stage focuses on design. The main question here is: what should the roadmap look like? The data provides information on the market consultation and how best to conduct and complete it. Following this information, a logical lay-out for the roadmap would be an overview of steps. The goal was that one could see at a glance what those steps are and what the order is. This led to the decision to design the roadmap as a literal road that one follows in order to successfully conduct a market consultation. The choice of colours is mainly based on the interface of the E-Learning module, in order

to keep the E-Learning module a coherent entity. Complementary colours have been used to make the information visually pop out.

2.3 Communication

The third stage is that of communication. In this stage, the data aspect and design aspect come together. The main question here is: how does the data fit the design of the roadmap? In other words, how to communicate the data in a way that it is clear and concise. To order the data fittingly to the design, the decision was made to outline the information by means of checklists. The idea of checklists gives readers of the roadmap specific handles when organising a market consultation. This way, the roadmap literally becomes a tool in itself. Checklists also ensure that long and complex sentences are avoided and that the data/information becomes practical instead of theoretical. Checklists thus opened up the opportunity to communicate the data in an understandable manner, fit the data in the design and give body to the distinct steps.

3. Content Roadmap

Preliminary market consultations could be applied to any awarding procedure, regardless of its type, specific features and characteristics. Market consultations can be successfully used especially in cases of activities characterized by a particular level of complexity. Preliminary market consultations are a voluntary tool provided to public authorities in order to achieve better results in the process of awarding contracts. The Directive 2014/24/EU introduces a requirement for market consultations to make the public procurement process lawful, namely to ensure that the preliminary market consultation does not distort competition and does not give an unjustified advantage to a particular participant.

The roadmap defines measures and steps that lead to compliance with this requirement, but also to an optimal result for the public authority. It helps them taking into account the complexity of the specific public procurement, the time available, the competition of the market and to choose the most appropriate way to conduct the market consultation.

The roadmap starts with the presumption and disclaimer that users of the roadmap have a clear understanding of the goals that they aim to achieve with their tender beforehand (Figure 2). From there, it provides five steps to guide public authorities and to support contracting authorities to conduct effective and lawful consultations.

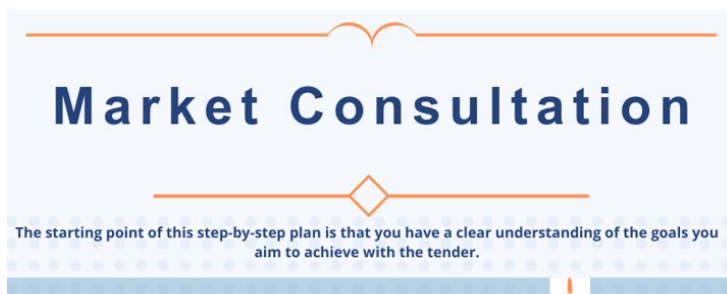


Figure 2. Market Consultation Roadmap: Starting Point

Following the starting point, the first step (Figure 3) provides a checklist of what users could consider regarding the format of their market consultation. It offers multiple ways of how a market consultation can be performed.

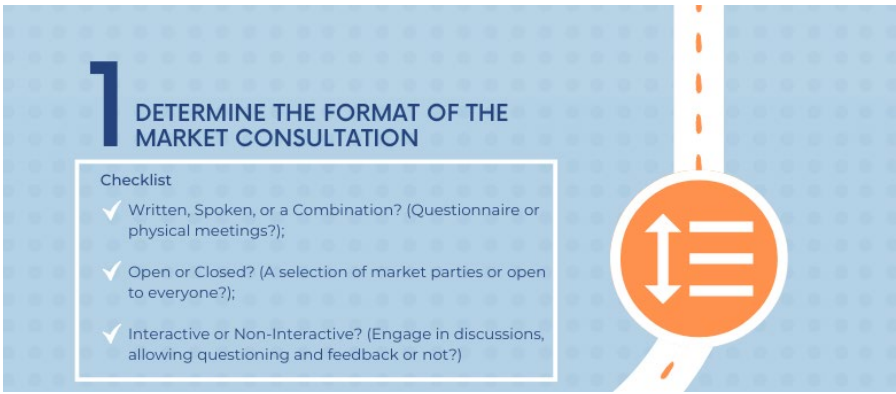


Figure 3. Market Consultation Roadmap: Step 1

After users have determined the format of their market consultation, the actual market consultation has to be prepared. Step 2 (Figure 4), provides important aspects that should be taken into account when preparing the market consultation. It shows tips both about how to prepare the content of the market consultation as well as what is important to communicate to the participating parties.



Figure 4. Market Consultation Roadmap: Step 2

The third step (Figure 5) entails important tips that should be considered regarding the organisation of a meeting for the consultation. These are related to the atmosphere of the session, communication of rules, how to perform conversations and how to record the consultation.



Figure 5. Market Consultation Roadmap: Step 3

Following the third step, the fourth step (Figure 6) provides an overview of what is important in the process of concluding the market consultation. It elaborates on aspects in which the results of the market consultation can be used and on what actions should be carried out after concluding the market consultation.



Figure 6. Market Consultation Roadmap: Step 4

The last step (Figure 7), step 5, provides a checklist of important aspects when utilising the results of the market consultation.



Figure 7. Market Consultation Roadmap: Step 5

Lastly, the roadmap provides the legal framework (Figure 8) in which the market consultation is embedded. The steps and their content are all formulated in line with Art. 40 and Art. 41 of the Directive 2014/24/EU.



Figure 8. Market Consultation Roadmap: Legal Framework

4. Next Steps

PROCEDIN is committed to several strategies to ensure the usability and the dissemination of the roadmap.

The roadmap will be published on the official PROCEDIN website, in a dedicated sub-page under the Resources Bank page², together with other infographics, roadmaps and tools on the legal framework of the partnership of the UA IRPP.

In line with the Grant Agreement of PROCEDIN, 4 2-day trainings on legal framework will be organised. One of the topics of these trainings will be linked to market consultation. In this training, the roadmap will be used to help and support public authorities on how a market consultation works in practice.

In addition, for each step of the roadmap, practical examples will be provided. This will enhance the usability of the roadmap even more, as each step will include a concrete example on how the market consultation is best executed.

As an extension to the trainings organised by PROCEDIN, different links will be made with other programmes and/or initiatives to use and disseminate the roadmap. Specifically, links with Innobroker and the UA IRPP will be invoked. The roadmap will be promoted by partners' initiatives as Informal Procurement Task Force and BUILD project.

Lastly, the roadmap will be incorporated in the E-Learning modules³ of the UAPP. The E-Learning modules cover all the aspects of innovative and responsible public procurement and incorporates a section dedicated to the legal framework. The E-Learning modules have reached over 2000 users so far, since it has been launched three years ago. This number is still growing in line with the development of the E-Learning modules, as it is updated regularly. The E-Learning modules both add to the usability and the dissemination of the roadmap.

² <https://procedin.eu/resources/>

³ E-Learning modules Urban Agenda Partnership on Innovative and Responsible Public Procurement: <https://uapp.maester.com/>

5. Appendix

I. Market Consultation Roadmap

Market Consultation

The starting point of this step-by-step plan is that you have a clear understanding of the goals you aim to achieve with the tender.

- ### 1 DETERMINE THE FORMAT OF THE MARKET CONSULTATION

Checklist

 - ✓ Written, Spoken, or a Combination? (Questionnaire or physical meetings?);
 - ✓ Open or Closed? (A selection of market parties or open to everyone?);
 - ✓ Interactive or Non-Interactive? (Engage in discussions, allowing questioning and feedback or not?);
- ### 2 PREPARE THE MARKET CONSULTATION

Checklist

 - ✓ Consider offering compensation to participating parties;
 - ✓ Keep the practical aspects simple;
 - ✓ Document your questions;
 - ✓ Formulate your questions in a clear and precise manner;
 - ✓ Indicate how you will handle confidential information;
 - ✓ State that participation is voluntary (non-binding) and that it does not confer any rights.
- ### 3 ORGANISE A MEETING

Checklist

 - ✓ Ensure a clear process and an atmosphere of trust during the spoken consultation and interactive sessions;
 - ✓ Emphasise the rules related to transparency, objectivity and equality in advance;
 - ✓ Use open-ended questions;
 - ✓ Document the market consultation in detail and submit the reports to the participating parties for approval.
- ### 4 CONCLUDE THE MARKET CONSULTATION

Checklist

 - ✓ Determine insights relevant to your procurement that will be used for:
 - the final program of requirements
 - the risk allocation between the client and the contractor
 - the payment process
 - the ultimate tender
 - ✓ Prepare the market consultation report, describing the obtained insights in general terms;
 - ✓ Make the market consultation report publicly available.
- ### 5 UTILISE THE RESULTS OF THE MARKET CONSULTATION IN YOUR TENDER

Checklist

 - ✓ Determine the final procurement strategy;
 - ✓ Attach the market consultation report as an appendix to your tender, so that all interested entrepreneurs have access to the same information;
 - ✓ Ensure that the obtained information does not lead to targeting a specific entrepreneur in the tender.

NB: When using preliminary market consultations or external expertise for the preparation of the tender, Public Authorities must be ensured that the competition is not disturbed and/or no unjustified advantage is provided to the candidates participating in the market consultations. (Art. 40 & 41 Directive 2014/24/EU)

This Roadmap has been developed with support and funding of:

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