

Netherlands



1. NATIONAL POLICY FRAMEWORK FOR INNOVATION PROCUREMENT

Governance and legal framework

The Dutch public procurement law from July 2016¹ transposes the EU public procurement directives 2014/23/EU, 2014/24/EU and 2014/25/EU. The Defence and Security Procurement Act (28/01/2013) transposes the Defence directive 2009/81/EC.

Innovation procurement in the Netherlands is supported by an **Action Plan for innovation procurement** (Innovatiegericht Inkopen) since 2013². Political commitment is ensured by the Dutch **Ministry of Economic Affairs and Climate Policy** and by the **Department for Innovation and Enterprise** within it.

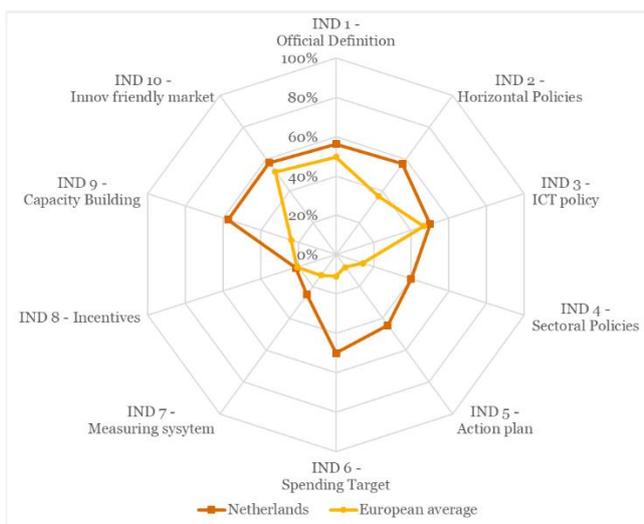
A key actor is **PIANOO**³, the Dutch national competence centre for public procurement, which has also a focus on innovation procurement, providing a stimulus to government bodies to elicit innovation from their procurement procedures and acting as network forum and diffusion platform. Such networking and diffusion is very important in the Netherlands because most public procurements are at regional and local levels and independent action plans on innovation procurement also exist at those levels.

Other important key actors are the **Ministry of Interior and Kingdom relations**, responsible for digitalisation, which is developing an **action plan for innovation procurement in the field of ICT** and the Ministry of Infrastructure and the Environment which is promoting the **Dutch Sustainable Procurement Action Plan**⁴.

In the Netherlands regional and urban administrations spend approximately 57%, national authorities 30% and other agencies spend 13%. There are certain cities which are frontrunner in a specific domain in innovation procurement, as for example Eindhoven in lighting/high tech, Rotterdam in transport, Amsterdam in digitalization. Urban authorities are responsible for a wide range of procurement fields, whereas regional authorities for construction of roads, bridges (provinces) or water infrastructure (Union of Dutch waterboards). The main sectors on a national level are defence, security, construction of national roads, bridges, public buildings.⁵

Innovation Procurement Policy Framework Benchmarking (2018)

In the benchmarking of the national innovation procurement policy frameworks across Europe, the Netherlands is at the 3rd position in the overall ranking with a total score of 45,5%. From the 30 countries analysed, the Netherlands is among the group of good performing countries in implementing a mix of policy measures that are conducive for mainstreaming innovation procurement. Having implemented 45,9% 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 the Netherlands to reach its full 100% potential.



Strengths: The Netherlands has structural capacity building and assistance measures, embedded within an action plan for innovation procurement.

Weaknesses: Timeline and resources allocated to the action plan are unclear, lack of endorsement of innovation procurement as strategic priority in a number of sectors. Monitoring system is not structurally applied to all procurements in the country yet, default IPR regime in general terms and conditions for government contracts hinders innovation.

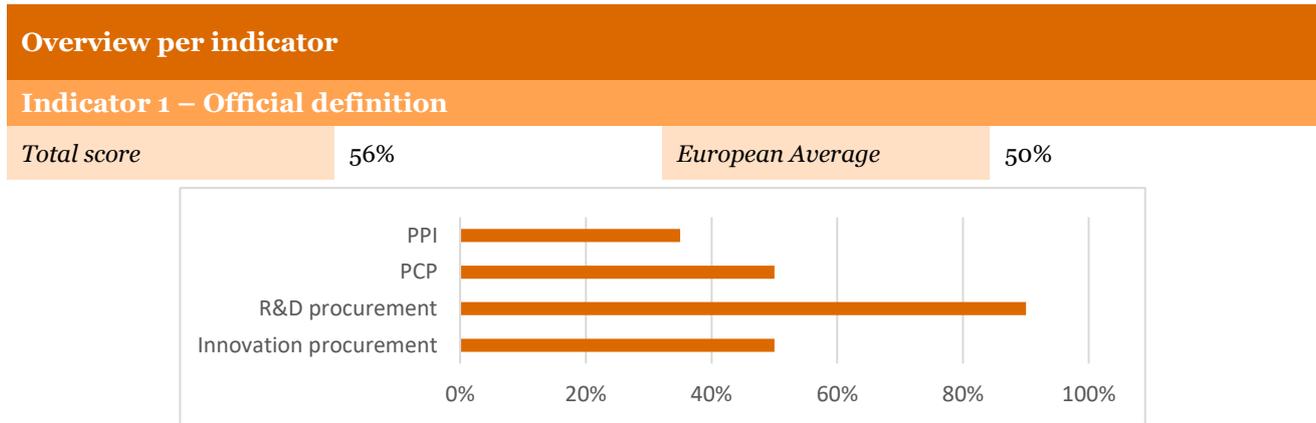
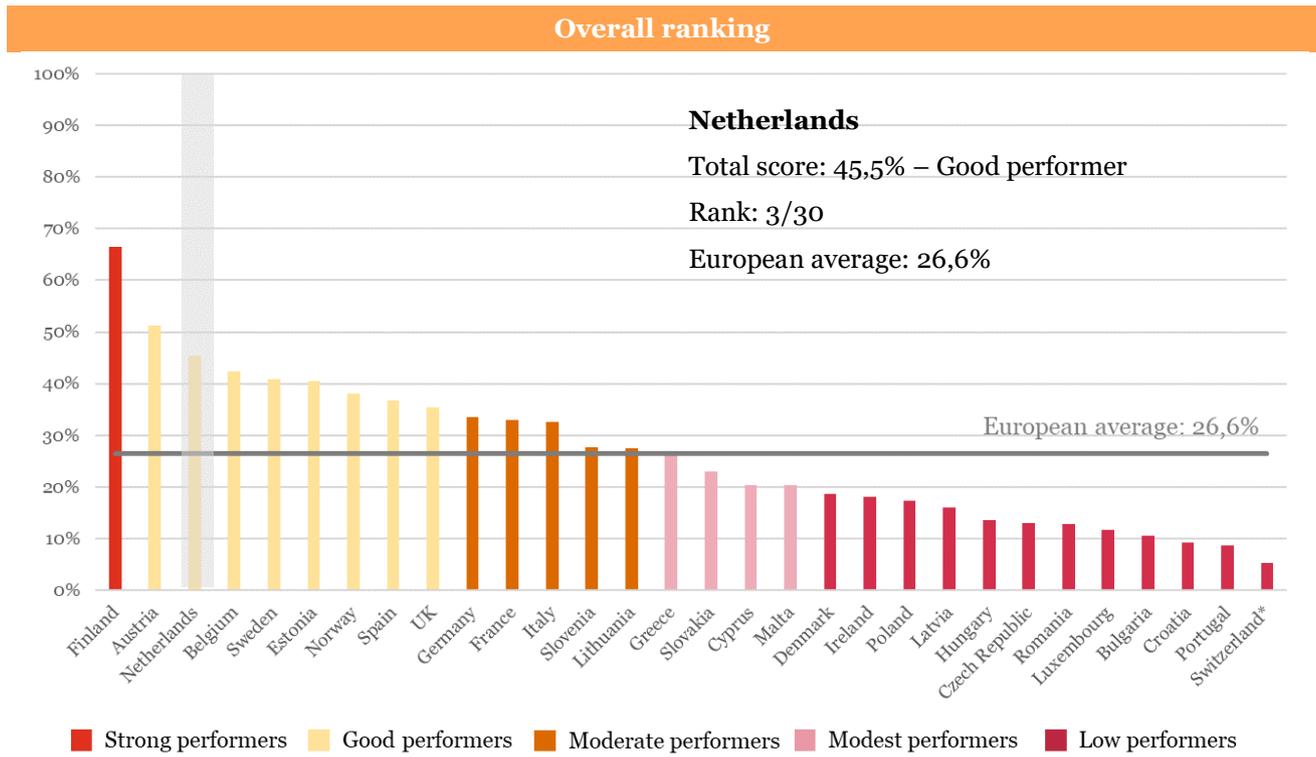
¹ Law of 22 June 2016 modifying Aanbestedingswet 2012 with respect to the implementation of public procurement directives 2014/23/EU, 2014/24/EU en 2014/25/EU, <https://zoek.officielebekendmakingen.nl/stb-2016-241.html>

² <https://www.pianoo.nl/document/14291/plan-van-aanpak-programma-inkoop-innovatie-urgent>

³ <https://www.pianoo.nl/> - Professional and Innovative Tendering, Network for Government Contracting Authorities (PIANOO)

⁴ <https://www.pianoo.nl/document/11858/action-plan-for-responsible-and-sustainable-procurement-by-governments-2015-2020>

⁵ <https://www.pianoo.nl/document/13169/inkoopvolume-van-nederlandse-overheid>



In the Dutch procurement legal framework there is a legal definition of innovation in the context of public procurement, which is not completely in line with the EU definition, and a legal definition of R&D in the context of public procurement, which is in line with the EU definition but only available in the defence procurement Act, but there are no legal definitions for innovation procurement, R&D procurement, Pre-Commercial Procurement (PCP) and Public Procurement of Innovative solutions (PPI). Innovation procurement and PCP procurement are defined in the National Action Plan for Innovation Procurement. For PPI there is no official definition in the legal framework or guidance docs, but the legal framework does provide the legal basis for all procurers in the country to implement PPI. Therefore the total score of this indicator is 56%.

The Dutch national legislation does not provide a definition of innovation procurement. However, since July 2016, article 1.1 of the Public Procurement Law⁶ defines **innovation** as “the application of a new or significantly improved product, a new or significantly improved service or a new or significantly improved process”. This definition transposes only the first part of the definition of innovation in the EU public procurement directives but not the last part which extends the scope beyond products, services or processes also to new marketing or organisational methods, workplace organisation or external relations. It is applicable to all public procurers in the country but not fully in line with the provisions in the EU public procurement directives. Guidelines to the Dutch public procurement law⁶ repeat that innovation is the application of a new or significantly improved product, service or process and add that these types of (product, service or process) innovation can happen for example in marketing or organisational methods, enterprise management or workplace organisation. This still leaves a difference with the definition of innovation in the EU public procurement

⁶ <https://europadecentraal.nl/wp-content/uploads/2015/12/Memorie-van-toelichting-Aanbestedingswet.pdf>

directives, because for example a marketing innovation that is not a product, service or process innovation is not considered an innovation.

At the same time a definition of **innovation procurement** is provided in the guidance document from the Dutch national competence centre for innovation procurement, i.e. PIANOo, and from the National Action Plan for Innovation Procurement. The definition is applicable to all public procurers in the country but is also based on the definition of innovation in Dutch public procurement law which is not fully in line with the EU directives. In particular, PIANOo guidance clarifies the key aim of innovation procurement (innovatiegericht inkopen) as “Public bodies procure and develop innovative solutions that enhance the quality and the efficiency of the public service. It distinguishes two types of innovation procurement: (1) the public sector/procurement actively calls for innovative solutions by challenging industry to deliver an innovative solution for its problem or (2) the public sector/procurement does not actively call for innovative solutions but offers room for industry to offer an innovative solution. It clarifies also the difference with innovative procurement (innovatief inkopen) as follows: Innovation procurement is driven by the “result”, because innovation is being procured (and this can also be done with simple standard public procurement procedures). Innovative procurement is driven by the “process”, because it is about implementing the procurement process in an improved way without necessarily procuring any innovation (e.g. moving from paper based to electronic procurement processes). This definition of innovation procurement is based on the formal letter and report the minister of economic affairs and climate policy presented to parliament in 2009 and 2013, and the policy documents of the ministry of economic affairs and climate policy, responsible for the legal framework on procurement and the policy on public procurement of innovation. None of these documents specify however what is meant by an innovative solution in their definition of innovation procurement. Although without a legal definition of innovation procurement, the Country has a definition embedded in a national guideline which is applicable to all public procurers in the country but is not fully in line with the EU official definition. Therefore, the total score for the sub-indicator innovation procurement is 50%.

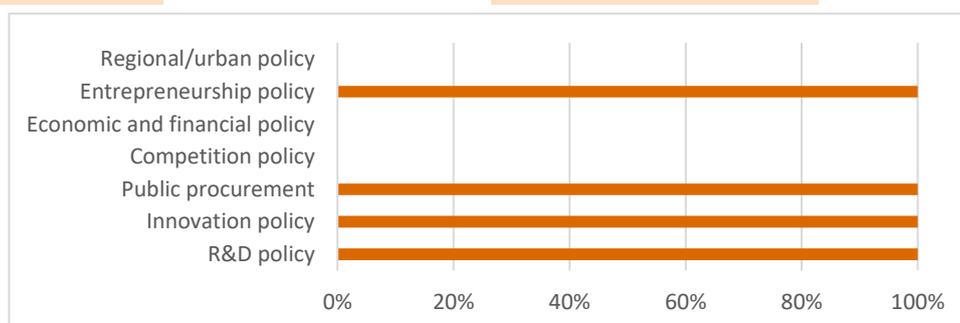
With regard to the definition of **R&D procurement**, article 1(1) of the Defence and Security Procurement Act provides a definition of R&D coherent with the EU legislation but only applicable in the defence sector. R&D is defined as “*all activities involving fundamental research, applied research and experimental development, where experimental development may include the establishment of technological demonstration models, including means of demonstrating the performance of a new concept or new technology in a relevant or representative environment*”. The definition is coherent with the EU definition but not applicable to all public procurers. For non-defence procurers, the national legislation identifies R&D only through the CPV codes for fundamental research, applied research and experimental development. Therefore, the total score for this sub-indicator is 90%.

In national legislation there is no **PCP definition**, but article 2.24(g) of the Public Procurement Act provides the legal basis to implement PCP. The national guidance provides a definition of PCP applicable to all public procurers in the country, but it is not fully in line with the EU definition (Dutch PCP definition does not recognise that PCP can include the purchase of non-commercial volumes of innovative solutions). Therefore the score of the sub-indicator PCP is 50%.

With respect to **PPI**, a definition is not available in the legal framework, and neither present in any policy document or guideline. However, the Dutch public procurement law (2016) enables procurers to implement PPI by allowing procurers to award contracts and monitor contract performance not only based on price but also based on innovation criteria. In particular, article 2.3.3.3 states that “*contracting authorities may impose special conditions on the performance of a public contract, provided that such conditions are related to the subject-matter of the contract and are stated in the contract notice or the tender documents. The conditions under which the public contract is executed may relate to economic, innovation-related, work-related, social or environmental considerations*”. Therefore, no definition of PPI exists, but there is a legal basis which is applicable to all public procurers in the country and in line with the provisions of the EU public procurement directives, resulting in a total score for the PPI sub-indicator of 35%.

Indicator 2 – Horizontal policies

Total score	57%	European Average	36%
--------------------	------------	-------------------------	------------



In the Netherlands, innovation procurement is politically embedded and treated with strategic importance in four horizontal policies: entrepreneurship, public procurement, innovation and R&D policies. The total score for this indicator is 57%.

Historically, the push to include innovation procurement in national policy objectives started in 1997 with the national **policy for R&D, innovation and entrepreneurship** (public sector as lead customer for innovation). The most recent

high-level political commitment for innovation procurement is found in the 2017-2021 Dutch government agreement⁷ which commits that "the government will make better use of its purchasing power to buy more innovatively".

Under entrepreneurship policy, the "SME Cooperation Agenda 2016-2017"⁸ (MKB Samenwerkingsagenda 2016-2017) of the Ministry of Economic Affairs envisages local authorities support for SMEs and Start-ups for participating in innovation procurements (see also "Start-up Delta": agenda start-up participation in public procurement)⁹.

Furthermore, the Ministry of Infrastructure and Water Management *Rijkswaterstaat* introduced its own Strategy for Innovation-oriented purchasing (*Beleidskader innovatiegericht inkopen*), which aims at supporting its programmes and projects with the introduction of innovation in the procurement processes by better engaging with market actors, removing existing barriers, and thus contributing to the overall target for innovation procurement.

In the field of **public procurement** policy, innovation is a secondary objective in Dutch public procurement legislation (article 2.3.3.3 aanbestedingswet 2016) and innovation procurement is encouraged via the national action plan for innovation procurement.

Indicator 3 – ICT policies

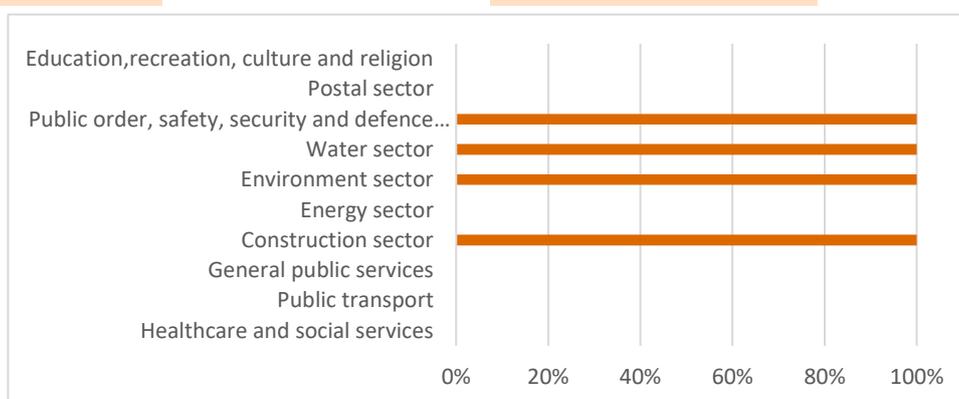
Total score	50%	European Average	47%
-------------	-----	------------------	-----

The **2016 Dutch digital agenda for the Netherlands** specifically recognises the key role of the public sector to drive forward digitisation through its role as buyer for innovative solutions. "Given the broad impact of digitisation, the role of the government extends further than the simple reinforcement of preconditions and safeguarding public interests. The government is also an actor in this transition, for example, as a buyer of innovative ICT products and services and as a digital service provider for citizens and businesses." A broad analysis across different sectors aims to implement innovative solutions through public procurement across all top sectors where the government is a key customer.

In addition, the ministry of interior and kingdom relations, responsible for digitalisation, is currently developing a specific **action plan for innovation & innovation procurement in the field of ICT**. This action plan (*innovatiepact*) is based on a report of a committee of the ministry of interior and kingdom relations and the ministry of economic affairs and climate policy on future digitalization¹⁰. The national government will spend 200 million euros on realizing a digital infrastructure per year¹¹. According to the RIO Report 2015, a multiple sector action agenda has been set also in the field of nano-technology and bio-based economy.

Indicator 4 – Sectorial policies

Total score	40%	European Average	14%
-------------	-----	------------------	-----



In the Netherlands, innovation procurement is recognised as a strategic priority in policy frameworks and action plans in four sectorial policies. The total score for this indicator is 40%.

In the field of public order, safety security and defence, the Ministry of **justice and security** has adopted in 2018 its step-by-step plan for innovation procurement¹². The Ministry of **defence** has adopted a strategy both for pre-commercial procurement and public procurement of innovative solutions¹³.

⁷ Regeerakkoord 2017-2021 "Vertrouwen in de toekomst"

<https://www.rijksoverheid.nl/regering/documenten/publicaties/2017/10/10/regeerakkoord-2017-vertrouwen-in-de-toekomst>

⁸ <https://www.rijksoverheid.nl/documenten/rapporten/2016/06/08/mkb-samenwerkingsagenda-2016-2017>

⁹ https://www.startupdelta.org/wp-content/uploads/2017/06/StartupDelta_Actionplan_01.pdf

¹⁰ <https://www.rijksoverheid.nl/documenten/rapporten/2017/04/18/rapport-van-de-studiegroep-informatiesamenleving-en-overheid-maak-waar>

¹¹ https://www.digicommissaris.nl/image/2016/12/22/digiprogramma_2017-989810276.pdf

¹² <https://www.piano.nl/document/15181/stappenplan-innovatiegericht-inkopen-ministerie-van-veiligheid-justitie>

¹³ <https://www.defensie.nl/onderwerpen/innovatie/front> and <https://www.defensie.nl/onderwerpen/innovatie>

As concerns the environment sector, the **Dutch Sustainable Procurement Action Plan**¹⁴, has been promoted by the Ministry of Economic Affairs and the Ministry of Infrastructure and Water Management since 2015 and has an explicit focus on encouraging more innovation procurement.

In the **water sector**, the Union of Dutch Waterboards has positioned innovation procurement clearly as an objective in their procurement strategy since 2014¹⁵. Innovation procurement by water sector procurers is also explicitly encouraged in the Ministry of Infrastructure and Water Management's High-Water Protection Programme²⁴.

The Ministries of Infrastructure and Water Management and the Ministry of Interior and Kingdom Relations have adopted in 2017 a **Construction Agenda** which encourages public procurers in the construction sector to actively use innovation procurement. This Construction Agenda was translated by public procurers in the construction sector into a market vision and innovation procurement strategy¹⁶.

Rijkswaterstaat, the part of the Ministry of Infrastructure and Water Management that is responsible for the practical execution of **public works and water management**, has developed a specific policy framework for innovation procurement and has added innovation procurement to the innovation agenda¹⁷ for the modernization of national roads, waterways, construction works.¹⁸ There are also some actions plans in certain sectors in certain regions, for example the Waterboard Limburg has adopted innovation procurement in its procurement action plan.¹⁹

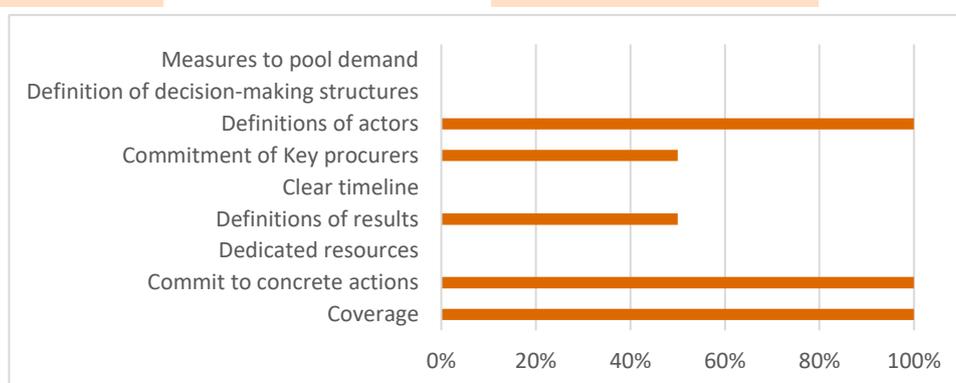
Indicator 5 – Action plan

Total score

44%

European Average

8%



The Netherlands has a national **Action Plan for innovation procurement since 2013**²⁰. The action plan commits to concrete actions and objectives. This includes setting up new innovation procurement projects, increasing the use of innovation procurement instruments, activating also local and regional authorities, water and health procurers to use more innovation procurement, developing financial incentives and a monitoring system to report back on innovation procurement implementation progress to the Dutch parliament. The development of the action plan is supported by the formal engagement of some key contracting authorities to the action plan (national government, regional and local authorities, water and health care procurers, other public procurers e.g. energy utilities are not involved) but only one procurer (*Rijkswaterstaat*) formally committed to achieve the 2,5% target. The key actor for the implementation of the Action Plan is **PIANoo**²¹, the **Competence Centre for Public Procurement**, including innovation procurement. In this context, PIANoo sets once a year an agenda which plans detailed objectives and initiatives.

The action plan does not have specific measures to pool demand, does not defined a specific decision-making structure does not have a clear timeline (milestones defined in the action plan do not go beyond 2015) nor dedicated resources. There is an overall definition of expected results, but this is not clearly broken down per actor and there is formal commitment from some key procurers but not from public procurers in all sectors, both of them therefore not fully enabling mainstreaming innovation procurement widely across the country. Sub-indicators "definition of results" and "commitment of key procurers" score therefore 50%. Therefore the total score of the indicator is 44%.

¹⁴ <https://www.pianoo.nl/document/11858/action-plan-for-responsible-and-sustainable-procurement-by-governments-2015-2020>

¹⁵ <https://www.uvw.nl/wp-content/uploads/2014/05/De-waterschappen-als-publieke-opdrachtgever.pdf>

<https://www.uvw.nl/wp-content/uploads/2018/01/De-waterschapsmarkt-van-de-toekomst-visiedocument.pdf>

¹⁶ <http://www.debouwagenda.com/PageByID.aspx?sectionID=151687&contentPageID=913677> and <https://www.marktvisie.nu/wp-content/uploads/2016/12/De-Marktvisie-1.pdf>

¹⁷ https://staticresources.rijkswaterstaat.nl/binaries/Innovatieagenda_herijking_2016_tcm21-100461.pdf

¹⁸ https://staticresources.rijkswaterstaat.nl/binaries/Beleidskader%20innovatiegericht%20inkopen_tcm174-362191_tcm21-14351.pdf

¹⁹ <https://www.wbl.nl/Documents/Inkoop%20o%20Aanbesteding/Inkoop-%20o%20aanbestedingsbeleid.pdf>

²⁰ <https://www.pianoo.nl/document/14291/plan-van-aanpak-programma-inkoop-innovatie-urgent>

²¹ <https://www.pianoo.nl/>

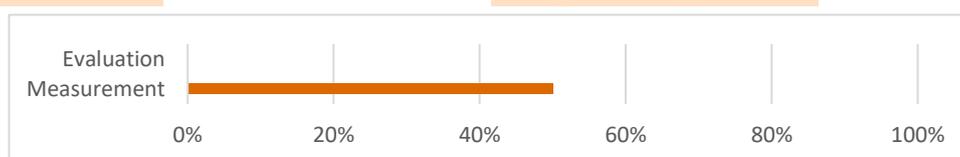
Indicator 6 – Spending target

Total score	50%	European Average	11%
--------------------	-----	-------------------------	-----

The Netherlands is one of the few European countries with a spending target for innovation procurement. The Dutch central Government sets a spending target for innovation procurement (defined according to the more restrictive Dutch definition) at **2,5% of total public procurement spending of the central government**²². This target is applicable to all types of innovation procurement (R&D procurement, PCP, PPI) but only to central bodies and it has been set as a non-compulsory goal although some public procurers (e.g. Rijkswaterstaat) have taken the commitment for themselves to reach the 2,5% target. In addition to this, there are no separate targets for R&D procurements, PPI and PCP. Therefore, the total score of the indicator is 50%.

Indicator 7 – Monitoring system

Total score	25%	European Average	13%
--------------------	-----	-------------------------	-----



Measuring: In 2008, a motion by the Dutch Parliament set a performance indicator on “the number of innovation procurement tenders organized by the central government”. Therefore the Netherlands conceived a method for measuring innovation procurement expenditure, which was applied between 2010-2013 to all types of innovation procurements (both R&D procurement, incl. PCP and PPI). Nonetheless, the method was not systematically and widely applied across the whole country (e.g. only for certain sectors or certain levels of government). The 2013 Dutch action plan on innovation procurement contains an action to develop a monitoring system to report back on the progress of reaching the 2,5% target to the Dutch parliament.

2010-2013 approach:

The measurement method for the performance indicator set by the Dutch parliament in 2008 focused on the process (are public procurers using techniques in their procurement procedure to facilitate more innovation) rather than the procurement outcome and it was used to evaluate a sample of Dutch tenders from the TED database (above the EU threshold). Tenders were evaluated by a written survey, follow-up interviews and desk research.

13 elements were used to evaluate the innovation procurements, and to each of them was attributed a weight:

1. Looking for an innovative solution
2. Market consultation before specification
3. Competitive dialogue
4. Design contest
5. Variants
6. Functional specification
7. Innovation included in award criteria
8. Intellectual property right to the contractor
9. Risk sharing in the contract
10. Incentives in (long term) contract for efficiency and effectiveness
11. Allowing for innovative solutions
12. Tender board
13. Using the potential of tender procedures to enhance innovation

The innovation procurement level was finally established and defined by categorising tenders in different categories according to their level of innovativeness: general procurement, with limited or few signals of innovation, and innovation procurements, with clear or strong signals of innovation.

In 2018 efforts have started to put a new voluntary measurement initiative in place, but it is still at its early stage. The new initiative is based on a tool in which public procurers can fill in on voluntary basis a number of questions to report to what extent completed public procurements were innovation procurements²³.

Also in this case the method applies to all types of innovation procurements (both R&D procurement, incl. PCP and PPI) but it is not systematically and widely applicable across the whole country (e.g. only for central authorities). Therefore the total score of this sub-indicator measurement system is 50%.

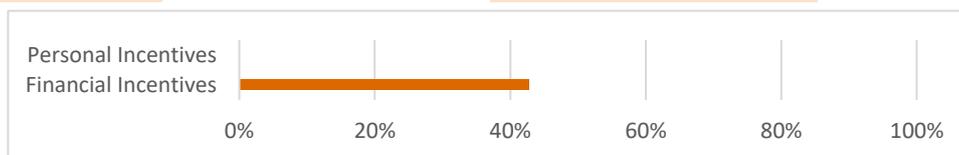
Evaluation: In 2018 there was still no system for evaluating the impacts of completed innovation procurements in the Netherlands. Efforts have started to develop for the future a system for evaluating the impacts of completed innovation procurements, however this is not operational yet. Therefore the score for this sub-indicator evaluation system is 0%.

The total score of the indicator is 25%. The performance is negatively affected by the absence of an evaluation system in place.

²² Brief aan de Tweede Kamer, Naar de top; het bedrijfslevenbeleid in actie(s), 13/09/2011

Indicator 8 – Incentives

Total score 21% **European Average** 22%



In the Netherlands there is no dedicated national or regional **financial incentives** programme to which all public procurers can apply to obtain co-financing to undertake more innovation procurements. There are some financial incentives for public procurers in the sectorial High Water Protection programme, but they are not conceived for combination with EU co-financing, are not available to all types of public procurers in the country (only to those in the high water field) and are not designed to incentivize large scale implementation of innovation procurement. Therefore, the total score of this sub-indicator financial incentives is 43%.

In the High-Water Protection programme²⁴ the ministry of infrastructure and water management explicitly foresees financial incentives to stimulate public procurers in the water sector to implement innovation procurement: the incentives offer 90% co-financing for regular procurements and 100% co-financing for procurements focusing on R&D.

Finally, the country does not have **personal incentives** to encourage procurers to undertake more innovation procurements. The score for sub-indicator personal incentives is therefore 0%.

The total score for the indicator incentives is 21%.

Indicator 9 – Capacity building and assistance measures

Total score 57% **European 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	✓		✓	✓	✓	✓	83%
Good practices	✓		✓		✓		50%
Trainings/workshops	✓	✓	✓		✓		67%
Handbooks/guidelines	✓		✓	✓	✓	✓	83%
Assistance to public procurers	✓	✓	✓		✓		67%
Template tender documents							0%
Coordination / pre-approval							0%
Networking of procurers	✓	✓	✓	✓	✓		83%
One-stop-shop/ competence centre	✓	✓	✓	✓	✓		83%

The national **Competence Centre for Public Procurement, PIANOo** carries out most of the measures generally adopted to build up public procurers' know-how on innovation procurement, with the exception of the provision of templates and of activities to coordinate purchasing for several public procurers.

PIANOo is funded by the Ministry of Economic Affairs and Climate Policy and provides awareness raising and capacity building activities to give a stimulus to public procurers to elicit innovation from their procurement procedures.

PIANOo brings together experts within the "Innovation Procurement" expert network, combines knowledge and experience, gives advice to procurers and suppliers free of charge, collects and disseminates **case examples** on a **central website**²⁵. Published cases lack examples of Dutch PCPs as well as recent EU funded innovation procurement projects and good practice examples. The score for sub-indicator good practices is 67%.

²⁴ The high water protection programme: <http://www.hoogwaterbeschermingsprogramma.nl/Documenten+openbaar/Documenten+-+Financieringsregeling/HandlerDownloadFiles.ashx?idnv=681253> and <http://www.toconnect.nl/en/a-few-examples/high-water-protection-programme> and, <http://www.hoogwaterbeschermingsprogramma.nl/home/default.aspx>

²⁵ <http://www.innovatiekoffer.nl/> and <https://www.pianoo.nl/nl/themas/innovatiegericht-inkopen/praktijkvoorbeelden-innovatiegericht-inkopen>

The website lacks also a central place that gives an overview of all the recent EU initiatives supporting innovation procurement (e.g. EU funding opportunities for innovation procurements (e.g. H2020, ESIF, EIB), eafip, procure2innovative network of competence centres, EU guidance on innovation procurement, European initiative on benchmarking national policy frameworks for innovation procurement across Europe). This explains the score for the sub-indicator central website of 83%.

Advice is however limited to general information to public procurers to prepare and implement specific innovation procurements. PIANOo offers generic helpdesk (Q&A) type support²⁶ but does not offer individual case-by-case **assistance** to procurers to prepare and/or implement concrete tender documents for a specific innovation procurement. As there is therefore no assistance to mainstream all types of innovation procurement across the whole country, the score for sub-indicator assistance is 67%.

PIANOo regularly organises workshops and events, however mostly with the purpose of informing Dutch procurers about new aspects concerning innovation procurement, not so much with the intention to network Dutch procurers in order to identify common needs and foster collaboration between different procurers on innovation procurement to create scale-up effects. Under the impulse of ZENIT, the region North Rhine-Westphalia signed a cooperation agreement with the Netherlands and the Flemish region (The Netherlands) to network public procurers of their different countries to stimulate cross-border innovation procurements. As these **networking activities** are not implemented to achieve large scale effects, the score on the sub-indicator networking is 83%.

PIANOo uses **manuals**, presentations and articles in professional journals to raise awareness of innovation procurement opportunities. During themed meetings and in a PIANOo online discussion forum, buyers can exchange knowledge and experiences. PIANOo annuals and other Dutch guidelines on the Dutch public procurement law²⁷ are not clearly and not correctly representing all the differences between different innovation procurement instruments, in particular relating to PCP, SBIR and innovation partnerships these manuals/memorandum are not up-to-date with European toolkit analysis and with EU R&D&I State aid rules²⁸. The score for sub-indicator handbooks/guidelines is 83%.

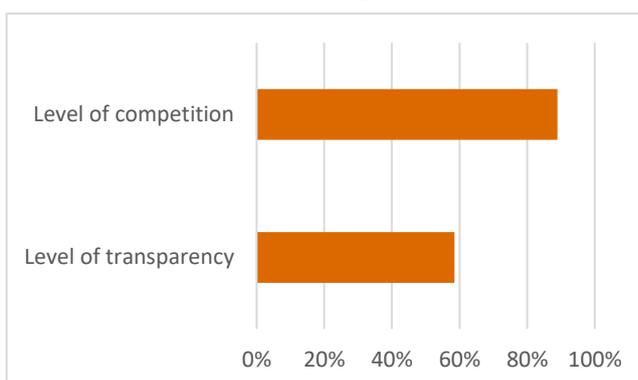
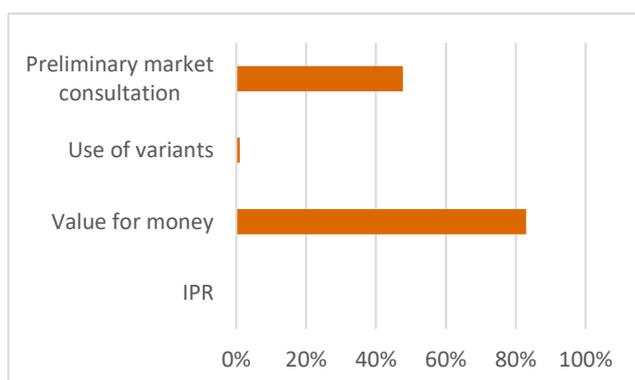
PIANOo participates in the EU-funded project “Procure2Innovate - European network of competence centres for innovation procurement” to reinforce its activities on innovation procurement support for procurers and to exchange experiences with competence centres in other EU countries.

There are no national **template tender documents** for innovation procurement. There is no national **pre-approval or coordination** for the implementation of innovation procurements. There is also some international **networking of procurers** to foster cross border cooperation on innovation procurements, but networking of procurers is not happening yet with an intensity to create innovation procurement cooperation with large scale impacts.

Therefore the total score for this indicator is 59%.

Indicator 10 – Innovation friendly public procurement market

Total score	53%	European Average	44%
I - Specific techniques to foster innovation in public procurement		II - Openness of the 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 procurement in the Netherlands
- II. The openness of the national public procurement market to innovations from across the EU single market

With regard to sub-indicator I, the Netherlands shows the following evidence:

- a. **IPR default regime:** The score for this sub-indicator is 0%, which is far below the European average of 38%, because the Dutch law and guidelines on public procurement do not define a default scenario for the distribution of IPR rights between procurers and suppliers but the General Government Terms and Conditions for Public Service Contracts (ARVODI 2008, article 23) define as default scenario that all IPR rights belong to the

²⁶ <https://www.pianoo.nl/nl/formulier/140/contactformulier-vragenloket-pianoo>

²⁷ <https://europadecentraal.nl/wp-content/uploads/2015/12/Memorie-van-toelichting-Aanbestedingswet.pdf>

²⁸ <http://eafip.eu/toolkit/>

contracting authority, unless otherwise specified in the procurement contract. The Dutch PIANOo guidelines on innovation procurement also stress the importance of assigning IPR ownership to participating companies for commercialising solutions but highlight also that Dutch procurer are keen on keeping IPR and finally does not recommend a clear strategy with a default approach. The Dutch SBIR contracts specify an IPR agreement that deviates from ARVODI article 23 in the contract, whereby IPR ownership rights are allocated to the participating companies and the contracting authority obtains license free usage rights as well as the right to require participating companies to provide licenses to third parties at fair and reasonable market conditions. As some large public procurers (e.g. Rijkswaterstaat, water sector procurers) have announced to revise their IPR strategy to the default scenario of leaving IPR ownership with contractors for their entire procurement strategy in general, a discussion has started in the Netherlands to revise possibly also the ARVODI default IPR scenario. But so far this has not happened yet so that score for this sub-indicator is still 0%. The Netherlands is the only country that is performing so low on this sub-indicator.

- b. **Use of value for money criteria:** According to the EU single market scoreboard, 83% of the procedures were not awarded on the basis of the lowest price only. This is well above the European average of 42% and reaching also the 80% satisfactory level set out in the EU single market scoreboard. Together with the UK, France and Ireland, the Netherlands is among the top performer countries on widespread usage of value for money award criteria.
- c. **Use of variants:** The country has allowed the use of variants in the 1% of the procedures. This percentage is well below the European average.
- d. **Preliminary Market Consultation:** The country has used Preliminary Market Consultations in the 48 % of the procedures. This percentage is largely above the European average of 9% and the highest among the 30 countries analysed.

Based on this evidence, the score for sub-indicator I is 323%, which is significantly above the European average of 23%. The low performance on adopting a default IPR allocation regime that fosters innovation annuls the positive effects of the widespread usage of value for money criteria but is more than compensated by the high percentage of Preliminary Market Consultations.

With regard to sub-indicator II, the Netherlands shows the following evidence (based on the Single Market Scoreboard):

- e. **Level of competition:** The level of competition of the national public procurement market is 89% which is slightly above the European average 84% but still below the 93% satisfactory level set by the EU single market scoreboard. This result is driven by the fact that both sub-indicators score above European average but below the satisfactory level set by the EU single market scoreboard: the percentage of procurement procedure for which a call for bids was conducted (94%) and the percentage of procurements with more than one bidder (84%).
- f. **Level of transparency:** The level of transparency of the public procurement market is 58% which is above the European average 45% but still below the 66% satisfactory level set by the EU single market scoreboard. The low TED publication rate (2,4) and the percentage of procurements without missing call for bids information (81%) are below European average. The percentage of procurements with published buyer registration numbers (92%) is above European average but still below the 97% satisfactory level set by the EU single market scoreboard.

Based on this evidence, the score for sub-indicator II is 74% which is above the European average of 65% but still below the satisfactory level 79% set by the EU single market scoreboard. This is due to the fact that both the level of transparency and competition are above European average but still need further improvement to reach the satisfactory level.

Based on the scores for sub-indicators I and II, the total score for the indicator "innovation friendly public procurement market" is 53% which is above the 44% European average. This score is explained mainly by the high use of value for money criteria and Preliminary Market Consultation in procurement procedures. Both the use of specific techniques to foster innovation in the country and the openness of the Dutch procurement market to innovations from across the EU single market are slightly above the European average but still below the satisfactory level. Indeed, the country has not yet adopted a default IPR regime in public procurement that fosters innovation which annuls the positive effects of widespread use of value for money criteria. In addition, although the national public procurement market shows an above average level of competition and transparency, both are still below the satisfactory level set by the EU single market scoreboard.