Study SMART 2016-0040
"The strategic use of public procurement for innovation in the digital economy"

Overview of findings on existing provisions in national public procurement and IPR legal frameworks across Europe with regards to IPR handling in public procurement

Study SMART 2016/0040 reports the following findings on IPR allocation in the 28 MS, Norway and Switzerland:

- For copyright type IPRs, national copyright laws define (also for the case of procurements) a mandatory or default regime for the allocation of the moral rights (owner/authorship right, right to define/change content, right to remuneration) and the economic rights (usage, reproduction, distribution etc. rights) of the copyright. In most of Europe, it is not possible for authors/creators to assign or even waive their moral rights. This is following a tradition in European copyright itself, which is regarded as an item of property which cannot be sold, but only licensed. Most continental Europe civil-law countries (24 out of 30) follow this author right model (author remains copyright owner and can only give away usage/exploitation rights). Copyright laws protect also scientific/creative work (solution designs, prototype/product/test specifications etc.), as well as computer programs and databases. Copyright is thus an essential type of IPR protection for public procurement in the ICT sector and for innovation procurement across all sectors.
    - In Slovakia, both moral and economic rights are inalienably allocated to the creator (law does not allow copyright to be transferred to a procurer) and a procurer is assigned only usage rights.
    - In all other countries except Denmark, Norway, Finland, Sweden, the UK and the Netherlands (23 countries in total) the moral rights are inalienably allocated to the creator but the creator is allowed to transfer, assign or license economic rights to a procurer. Restrictions apply though in France and Slovenia: in Slovenia not all (only single) economic rights can be transferred, in France only if the transfer/licensing of economic rights is limited in scope, duration, place and destination. In 4 of those 23 countries (Bulgaria, Latvia, Lithuania, Slovenia) that do not allow to transfer the entire copyright to public procurers, the national copyright law assigns by default only usage rights to procurers.
    - In Denmark, Norway, Finland and Sweden, the moral rights are allocated by default to the creator but not in an inalienable way. The creator can waive moral rights to a procurer in limited cases (when the use of the work is limited in nature and extent). Economic rights can be transferred or licensed to procurers but copyright law does not foresee default rights for procurers.
    - In the UK and the Netherlands, copyright law allocates by default all copyrights to the creator but allows creators to transfer or license both moral and economic rights completely to a procurer.
- In Belgium and Spain, the laws on public procurement define a default regime for IPR allocation that assigns only usage rights by default to the procurer. This is done in line with their national copyright laws according to which only economic/usage rights are transferrable from the creator to the procurer. The Belgian law states also that procurers should only deviate from the default regime that leaves IPR ownership with suppliers in exceptional cases (when the supplier is not allowed or not able to commercialise the results). In all other 28 countries, national procurement law does not define a specific IPR allocation/distribution between procurer and contractor. 21 countries transposed the provision from the 2014 EU public procurement directives that the tender documents can require the transfer of IPR rights to the procurer (DE, FI, EE, HU, LU, SK, NL, NO, CH do not have such a provision in national law).
- In France, Finland, UK and Switzerland, the general terms for government contracts and in Estonia, Ireland, Hungary, Luxembourg, Slovenia, Denmark, Norway and Sweden national guidance on public procurement specify a default regime for IPR allocation that leaves IPR ownership with the contractor and assigns only usage rights to the public procurer (in Estonia, Ireland, Slovenia, Hungary and Luxembourg in national guidance on public procurement, innovation procurement, IT procurement and/or facilitating the access of SMEs to public procurement; in Denmark, Norway and Sweden in national guidance on R&D/PCP procurement). This default regime is in line with these countries' national copyright laws according to which only economic/usage rights on copyrights are transferrable from the creator to the procurer (Switzerland, Estonia, Ireland, Luxembourg, Hungary), or the ownership of copyrights is only transferrable in limited cases from creator to procurer (France, Finland, Denmark, Sweden, Norway).

More detailed info on study findings per country

Austria	There is no default scenario for the distribution of IPR rights between procurers and suppliers in Austria. The Austrian law, general terms and conditions for government contracts and guidelines on public procurement do not define how allocation of IPRs is best dealt with in procurement contracts. It is left to the individual responsibility of each Austrian procurer to specify clearly the IPR allocation for the procurement in its tender documents so that it stimulates innovation and is compliant with applicable IPR/copyright law. The Austrian public procurement law foresees that public procurers can require in the tender specifications a transfer of IPR rights between (sub)contractors and the procurer. However according to the Austrian copyright act, copyrights (moral right) cannot be transferred by the creator to another party, even when the creator is commissioned by the procurer (as contractor) or employed (e.g. by a subcontractor) to work on the procurement contract. If the procurer wants to use copyrights created by (sub)contractors in his procurement he must require in the tender specifications a license to the economic rights (e.g. usage, licensing, publication, modification, reproduction rights) at equitable payment. Copyright protects also scientific work (product designs, product specifications, tests etc.), computer programs and databases. It is worth noting that the Austrian action plan on Innovation oriented public procurement mentions that, there is a lack of know-how in Austria on how to implement the possibility to leave IPR ownership right with the suppliers in public procurement contracts while keeping usage and licensing rights for the public procurer. It mentions also that this lack of know-how is hindering this option from being used and EU guidance on this topic is welcome.
Belgium	The Belgian public procurement legislation clearly defines a default regime for the allocation of IPRs that stimulates innovation while enabling the public procurer to use the results of the procurement in the execution of its public tasks: contractors retain the IPR developed by them, notwithstanding that they grant the necessary licenses to the public procurer to use the results and if required to ensure licensing of the results to third parties. The Belgian law also clearly recommends procurers to only deviate from the default IPR regime in limited justified cases: when the contractor is not allowed to reuse the results (e.g. a sensitive/confidential study such as an internal evaluation) or when the contractor is not able to reuse the results (e.g. a unique communication campaign such as a design of a logo made specifically for the procurer). Deviation from the default regime is in any case only possible within the boundaries of applicable IPR/copyright law. The Belgian public procurement law foresees that public procurers can require in the tender specifications the transfer of IPR rights to the procurer. However according to the Belgian copyright act, copyrights (moral rights) cannot be transferred to another party (the procurer), even when the creator is commissioned by the procurer (as contractor) or employed (e.g. by a subcontractor) to work on the procurement contract. Thus if a procurer wants to obtain specific economic rights on commissioned works that go beyond the default usage rights included in the law (e.g. licensing, publication, modification, reproduction rights), he needs to require in the tender specifications the licensing, assignment or transfer of those specific additional economic rights that he needs. Copyright protects also scientific work (product designs, product specifications, tests etc.), computer programs and databases.
Bulgaria	There is no default scenario for the distribution of IPR rights between procurers and suppliers in Bulgaria. Bulgarian law, general terms and conditions for government contracts and guidelines on public procurement do not define how IPR allocation is best dealt with in procurement contracts. It is left to the individual responsibility of each Bulgarian procurer to specify clearly the IPR allocation for the procurement in its tender documents so that it stimulates innovation and is compliant with applicable IPR/copyright law. The Bulgarian public procurement law foresees that procurers can require in the tender specifications the transfer of IPR rights to the procurer. However as copyright (moral rights) cannot be fully transferred by the creator to another person under the Bulgarian Copyright act, the act defines as default scenario that in commissioned work (public procurements) copyright belongs to the creator of the work (copyright shall be owned by the creator) and that the procurer only keeps the right to use copyrighted work for the purposes for which it was commissioned (e.g. for usage, licensing, publication, modification, reproduction). Copyright protects also scientific work (product designs, product specifications, tests etc.), computer programs and databases.
Croatia	There is no predefined default scenario on distribution of IPR rights between procurers and suppliers in Croatia. Croatian law, general terms and conditions for government contracts and guidelines on public procurement do not define how allocation of IPRs is best dealt with in procurement contracts. It is left to the individual responsibility of each Croatian procurer to specify clearly the IPR allocation for the procurement in its tender documents so that it stimulates innovation and is compliant with applicable IPR/copyright law. The Croatian public procurement law foresees that procurers can require in the tender specifications the transfer of IPR rights to the procurer. However, according to Croatian copyright law each person that has contributed to the creation of a commissioned work shall retain copyright in his own contribution. Thus if a procurer wants to obtain specific economic rights (e.g. usage, licensing, publication, modification, reproduction rights) on commissioned works, he needs to require in the tender specifications the licensing, assignment or transfer of those economic rights that he needs. Copyright protects also scientific work (product designs, product specifications, tests etc.), computer programs and databases. For computer programs and databases the Croatian copyright act includes an exception which provides that the procurer shall have in any case economic rights.
Cyprus	There is no predefined default scenario on distribution of IPR rights between procurers and suppliers in Cyprus. The Cypriot law, general terms and conditions and guidelines on public procurement do not define how IPR allocation is best dealt with in public procurement contracts. It is left to the individual responsibility of each Cypriot procurer to specify clearly the IPR allocation for the procurement in its tender documents so that it stimulates innovation and is compliant with applicable IPR/copyright law.

	Cypriot public procurement law foresees that public procurers can require in the tender specifications the transfer of IPR rights between the contractor and the procurer. However, according to Cypriot copyright law, copyright (moral rights including the right to remuneration) belongs in an inalienable way to the creator. Only economic rights can be transferred, assigned or licensed by the creator to another person/entity. Thus if a procurer wants to obtain specific economic rights (e.g. usage, licensing, publication, modification, reproduction rights) on commissioned works, he needs to require in the tender specifications the licensing, assignment or transfer of those economic rights that he needs. Copyright protects also scientific work (product designs, product specifications, tests etc.), computer programs and databases.
Czech Republic	There is no predefined default scenario on distribution of IPR rights between procurers and suppliers in the Czech Republic. The Czech Republic law, general terms and conditions for government contracts and guidelines on public procurement do not define how IPR allocation is dealt with in procurement contracts. It is left to the individual responsibility of each Czech procurer to specify clearly the IPR allocation for the procurement in its tender documents so that it stimulates innovation and is compliant with applicable IPR/copyright law. The Czech public procurement law foresees that procurers can require in the tender specifications the transfer of IPR rights to the procurer. However, the Czech copyright act assigns copyright to the creator and determines that the copyright (moral right) cannot be transferred by the creator to another party, even when he is commissioned by the procurer (the contractor) or employed by a contractor (e.g. as a subcontractor) to work on the procurement contract. As the economic rights are also not transferrable under Czech law, if the procurer wants to use the commissioned work, he cannot require a transfer of those rights but he can only require in the tender specifications to obtain a non-exclusive license to the economic rights (e.g. for usage, licensing, publication, modification, reproduction rights) at equitable payment. Copyright protects also scientific work (product designs, product specifications, tests etc.), computer programs and databases. For computer programs and databases produced on order there is an exception in the Czech copyright act which provides that the procurer shall have in any case economic rights.
Denmark	There is no predefined default scenario on distribution of IPR rights between procurers and suppliers in Denmark. The Danish law, general terms and conditions for government contract and guidelines on public procurement do not define how IPR allocation is best dealt with in procurement contracts. It is left to the individual responsibility of each Danish procurer to specify clearly the IPR allocation for the procurement in its tender documents so that it stimulates innovation and is compliant with applicable IPR/copyright law. The Danish public procurement law foresees that public procurers can require in the tender specifications transfer of IPR rights to the procurer. However, the Danish copyright act assigns copyright to the creator and determines that a copyright (moral rights) can only be waived to a limited extent by the creator (to a procurer) when the use of the work in question (by the procurer) is limited in nature and extent. Thus if a procurer wants to obtain specific economic rights (e.g. usage, licensing, publication, modification, reproduction rights) on commissioned works, he needs to require in the tender specifications the licensing, assignment or transfer of those economic rights that he needs. Copyright protects also scientific work (product designs, product specifications, tests etc.), computer programs and databases. With regards to PCP, the guidelines and model contracts for PCPs supported by the Danish Market Development Fund define that IPR ownership remains with the contractor and the procurer obtains usage and licensing related rights
Estonia	The Estonian public procurement law does not address the issue of IPR allocation or transfer and the general terms and conditions for all government contracts do not define a default IPR regime either. However, the Estonian guide on innovation procurement issued by EAS highlights that public procurers must decide before the launch of the procurement procedure about what is their IPR strategy and that they should only buy the rights they really need (which are typically usage rights) because the procurers' requirements on IPR rights will affect the price paid for the public procurement. The guide also reminds public procurers that public procurers should ensure that the allocation of IPR between public procurers and suppliers is compliant with the Estonian copyright rules. Indeed, the Estonian Copyright act defines as default scenario that both the moral and economic rights of copyrights belong to the creator (also in public procurements) and that a copyright (moral rights) cannot be transferred by the creator (supplier) to another person (procurer). Thus if a procurer wants to obtain specific economic rights (e.g. usage, licensing, publication, modification, reproduction rights) on commissioned works, he needs to require in the tender specifications the licensing, assignment or transfer of those economic rights that he needs. Copyright protects also scientific work (product designs, product specifications, tests etc.), computer programs and databases. In respect of this IPR/copyright and software/database legislation, the Estonian guide and model contracts for ICT procurements foresee leaving IPR ownership with the contractor and allocating a license (to use, reproduce, alter, distribute and sublicense) to the public procurer.
Finland	The Finnish public procurement law does not address the issue of IPR allocation or transfer. However the general terms for the Finnish government's service and product type public procurement contracts ("JYSE2014 services" and "JYSE2014 supplies") define as default scenario that the public procurer obtains only usage rights while all other IPR rights are left with the contractor. This approach was adopted in line with the Finnish copyright act that assigns copyright to the creator and determines that the moral rights can only be waived to a limited extent by the creator when the use of the work in question is limited in nature and extent. Thus if a procurer wants to obtain specific economic rights (e.g. usage, licensing, publication, modification, reproduction rights) on commissioned works, he needs to require in the tender specifications the licensing, assignment or transfer of those economic rights that he needs. Copyright protects also scientific work (product designs, product specifications, tests etc.), computer programs and databases. The act foresees that whoever has legally acquired a computer program may make such copies of the program and make such alterations to the program as are necessary for the use of the program for the intended purpose. This shall also apply to the correction of errors.
France	The French law on public procurement does not define how allocation of IPRs is dealt with in

	procurement contracts but the French national general terms and conditions for government contracts (CCAG) define as default scenario (Option A) that the procurer obtains only usage rights and all other IPR rights are left with suppliers. Option B provides that, if specifically mentioned in the procurement contract, all IP rights are exclusively assigned to the procurer. Option B is used only in the CCAG guidelines for procurements of "standard" products/services that are not software related ("standard" meaning when no IPR will be created during the procurement). Option A is used in the CCAG guidelines for all other procurements, i.e. procurements that involve some form of intellectual services and/or software. Furthermore, according to the Practical Guide to Innovative Public Procurement, in the case of PCP, the only possible option is A, allowing a further exploitation of the IPRs by the provider. The policy to go for Option A as default scenario was adopted specifically to ensure that IPR allocation in public procurements does not violate French copyright law (the Intellectual property Code). The latter determines that copyrights belong in an inalienable way to the creator. The existence or conclusion of a contract for hire or of service by the creator of a work of the mind (e.g. a public procurement contract) shall in no way derogate from the enjoyment of this right enjoyed by the creator. Only the economic rights can be assigned or licensed by the creator to another person/entity, on condition that the assignment is limited in scope, duration, place and destination. Thus if a procurer wants to obtain specific economic rights (e.g. usage, licensing, publication, modification, reproduction rights) on commissioned works, he needs to require in the tender specifications the licensing, assignment or transfer of those economic rights that he needs. Copyright law protects also scientific work, software and database rights.
Germany	There is no default scenario for the distribution of IPR rights between procurers and suppliers in Germany. The German law, general terms and conditions for government contracts and guidelines on public procurement do not define how IPRs are best dealt with in procurement contracts. It is left to the individual responsibility of each German procurer to specify clearly the IPR allocation for the procurement in its tender documents so that it stimulates innovation and is compliant with IPR/copyright law. However, the German copyright act assigns copyright (moral rights) intransferably to the creator. Thus if a procurer wants to obtain specific economic rights (e.g. usage, licensing, publication, modification, reproduction rights) on commissioned works, he needs to require in the tender specifications the licensing, assignment or transfer of those economic rights that he needs. Copyright law protects also scientific work, software and database rights.
Greece	In Greece there is no default regime for the distribution of IPR rights between procurers and suppliers. The Greek law, general terms and conditions for government contracts and guidelines on public procurement do not define how allocation of IPRs is best dealt with in procurement contracts. It is left to the individual responsibility of each Greek procurer to specify clearly the IPR allocation for the procurement in its tender documents so that it stimulates innovation and is compliant with applicable IPR/copyright law. The Greek public procurement law foresees that procurers can require in the tender specifications the transfer of IPR rights to the procurer. However, the Greek copyright law determines that copyright (moral rights) belong in an inalienable way to the creator. Only the economic rights can be transferred, assigned or licensed by the creator to another person/entity. Thus if a procurer wants to obtain specific economic rights (e.g. usage, licensing, publication, modification, reproduction rights) on commissioned works, he needs to require in the tender specifications the licensing, assignment or transfer of those economic rights that he needs. Copyright law protects also scientific creations, software and database rights. Templates for public procurements in Greece refer (in the preamble) to the Greek Copyright law.
Hungary	The Hungarian law and general terms and conditions for government contracts on public procurement do not define how to best allocate IPRs allocation in order to stimulate innovation. However, guidance on the Hungarian public procurement authority's webpage states that "*public procurers need to consider up front which IPR strategy to use and advocates that normally sharing of information or obtaining licenses to use suppliers' IPR is sufficient and transfer of suppliers' IPR to the public procurer is not needed*". This approach is in line with the Hungarian copyright act which determines that copyright (moral rights) belong in an inalienable way to the creator. Only the economic rights can be transferred, assigned or licensed by the creator to another person/entity. Thus if a procurer wants to obtain specific economic rights (e.g. usage, licensing, publication, modification, reproduction rights) on commissioned works, he needs to require in the tender specifications the licensing, assignment or transfer of those economic rights that he needs. Copyright law protects also scientific creations, software and database rights.
Ireland	The Irish law and general terms and conditions for government contracts do not define a default regime for IPR but the Irish government's 10 step guide on buying innovation and facilitating the access of SMEs to public procurement recommends that public procurers leave IPR ownership with contractors. It explains that: "*If government decides to keep the IPR, it will have to pay a higher price for exclusive development. A supplier who can keep the IPR may consider it to be an investment, a building block for other projects. This would normally be reflected in a lower price for the public procurer. For overall economic development it is preferable that the IPR stay with the supplier so that the results of procurement (i.e. innovative solutions) can be diffused into the market. Ideally intellectual property rights should ultimately rest with the party who is best able to exploit it.*" This guidance was drawn up in line with Irish copyright Act. Irish public procurement law foresees that public procurers can require in the tender specifications the transfer of IPR rights to the procurer. However, the Irish copyright act determines that the copyright (moral right) cannot be transferred by the creator to another party. Thus if a procurer wants to obtain specific economic rights (e.g. usage, licensing, publication, modification, reproduction rights) on commissioned works, he needs to require in the tender specifications the licensing, assignment or transfer of those economic rights that he needs. Copyright protects also scientific work (product designs, product specifications, tests etc.), computer programs and databases.

Italy	There is no default scenario for distribution of IPR rights between procurers and suppliers in Italy. Italian law, general terms and conditions for government contracts and guidelines on public procurement do not define how IPR allocation is best dealt with in procurement contracts. It is left to the individual responsibility of each Italian procurer to specify clearly the IPR allocation for the procurement in its tender documents so that it stimulates innovation and is compliant with applicable IPR/copyright law. However, Italian copyright law determines that copyrights belong in an inalienable way to the creator (cannot be waived, licensed or assigned to anyone else). Only the economic rights can be transferred, assigned or licensed by the creator to another person/entity. Thus if a procurer wants to obtain specific economic rights (e.g. usage, licensing, publication, modification, reproduction rights) on commissioned works, he needs to require in the tender specifications the licensing, assignment or transfer of those economic rights that he needs. Copyright law protects also scientific work, software and database rights. In the specific case of PCP, the Italian law refers to the EC COM 799/2007 which explains that in PCPs IPR ownership remains with the contractor while the contracting authority retains usage and rights to require the contractors to give licenses to third parties under fair and reasonable market conditions.
Latvia	There is no default scenario for the distribution of IPR rights between procurers and suppliers in Latvia. Latvian law, general terms and conditions for government contracts and guidelines on public procurement do not define how IPR allocation is best dealt with in procurement contracts. It is left to the individual responsibility of each Latvian procurer to specify clearly the IPR allocation for the procurement in its tender documents so that it stimulates innovation and is compliant with applicable IPR/copyright law. However, Latvian copyright law determines that copyrights belong in an inalienable way to the creator (cannot be waived, licensed or assigned to anyone else). Only the economic rights can be transferred, assigned or licensed by the creator to another person/entity. Therefore Latvian copyright law determines that for commissioned works the author retains copyright and the commissioning party obtains the right to use the commissioned work. If the procurer wants to obtain other economic rights on commissioned works beyond the default usage right (e.g. licensing, modification, reproduction rights) he must require in the tender specifications the transfer, assignment or a license of those additional economic rights that he needs at equitable payment. Copyright law protects also scientific work, software and database rights.
Lithuania	There is no default scenario for the distribution of IPR rights between procurers and suppliers in Lithuania. The Lithuanian law, general terms and conditions for government contracts do not define how IPR allocation is best dealt with in procurement contracts. It is left to the individual responsibility of each Lithuanian procurer to specify clearly the IPR allocation for the procurement in its tender documents so that it stimulates innovation and is compliant with applicable IPR/copyright law. However, Lithuanian copyright law determines that copyrights belong in an inalienable way to the creator (cannot be waived, licensed or assigned to anyone else). Only the economic rights can be transferred, assigned or licensed by the creator to another person/entity. Therefore Latvian copyright law determines that for commissioned works the author retains copyright and the commissioning party obtains either a license to use the commissioned work or - if required in the contract – a transfer of economic rights at equitable payment. The procurer needs to therefore clearly specify in the tender documents which economic rights (e.g. licensing, modification, reproduction rights) on commissioned works he wants to obtain. Copyright law protects also scientific work, software and database rights.
Luxembourg	The Luxembourg law, general terms and conditions for government contracts on public procurement do not define a default scenario for the distribution of IPR rights between procurers and suppliers but the Luxinnovation guide on innovation procurement explains that "*The contracting authority may choose to acquire rights to use the results for its clearly defined needs and leave the ownership of the IPRs related to the results with the contractor (first option) instead of choosing to acquire the rights exclusively for himself preventing the contractor from exploiting them (second option). The contracting authority needs to ensure that the chosen option is not disproportionate to his real needs as the price will differ depending on the chosen option.*" The guide also explains that PCP uses the first option. This guidance is in line with the Luxembourg copyright law, which determines that copyrights belong in an inalienable way to the creator (cannot be waived, licensed or assigned to anyone else). Only the economic rights can be transferred, assigned or licensed by the creator to another person/entity. If the procurer wants to obtain specific economic rights on commissioned works (e.g. usage, licensing, modification, reproduction rights) he must require in the tender specifications the transfer, assignment or a license of those specific economic rights that he needs at equitable payment. Copyright law protects also scientific work, software and database rights.
Malta	There is no default scenario for the distribution of IPR rights between procurers and suppliers in Malta. Maltese law, general terms and conditions for government contracts and guidelines on public procurement do not define how IPR allocation is best dealt with in public procurement. It is left to the individual responsibility of each Maltese procurer to specify clearly the IPR allocation for the procurement in its tender documents so that it stimulates innovation and is compliant with applicable IPR/copyright law. However, the Maltese copyright law determines that copyrights belong in an inalienable way to the creator even after transfer or licensing of economic rights. The economic rights can be transferred, assigned or licensed by the creator to another person/entity. If the procurer wants to obtain specific economic rights on commissioned works (e.g. usage, licensing, modification, reproduction rights) he must require in the tender specifications the transfer, assignment or a license of those specific economic rights that he needs at equitable payment. Copyright law protects also scientific work, software and database rights.
Netherlands	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 contracting authority, unless otherwise specified in the procurement contract. The Dutch PIANOo

	guidelines on innovation procurement 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 the guidelines do 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.
Norway	There is no default scenario for the distribution of IPR rights between procurers and suppliers defined in the Norwegian law, general terms and conditions for government contracts and guidelines on public procurement. It is left to the individual responsibility of each Austrian procurer to specify clearly the IPR allocation for the procurement in its tender documents so that it stimulates innovation and is compliant with applicable IPR/copyright law. However, the Norwegian copyright act assigns copyright to the creator and determines that the moral rights can only be waived to a limited extent by the creator when the use of the work in question is limited in nature and extent. If the procurer wants to obtain specific economic rights on commissioned works (e.g. usage, licensing, modification, reproduction rights) he must thus require in the tender specifications the transfer, assignment or a license of those specific economic rights that he needs at equitable payment. Copyright protects also scientific work (product designs, product specifications, tests etc.), computer programs and databases. The Difi guidelines about PCP explain that in PCPs the contractors should retain IPR ownership rights and the public procurer retains usage and licensing rights. There also some template tender documents for some other types of procurements on the Difi website where IPR ownership is left with the contractors, but these are not for all types of procurements that can involve innovation and also informational only.
Poland	There is no default scenario for the distribution of IPR rights between procurers and suppliers in Poland. The Polish law, general terms and conditions for government contracts and guidelines on public procurement do not define how allocation of IPRs is best dealt with in procurement contracts. It is left to the individual responsibility of each Polish procurer to specify clearly the IPR allocation for the procurement in its tender documents so that it stimulates innovation and is compliant with applicable IPR/copyright law. However, Polish copyright law determines that copyright ownership belongs in an inalienable way to the creator (cannot be waived, licensed or assigned to anyone else). Only the economic rights can be transferred, assigned or licensed by the creator to another person/entity. Therefore if a procurer wants to obtain specific economic rights, he must require in the tender specifications the transfer, assignment or a license of those economic rights (e.g. licensing, publication, modification, reproduction) that he needs at equitable payment. Copyright law protects also scientific work, software and database rights.
Portugal	Portuguese law and guidelines on public procurement do not prescribe how IPR allocation is dealt with in public procurement and do not predefine a default scenario on distribution of IPR rights. It is thus important that procurers define in their tender documents how to allocate IPRs resulting from the procurement in compliance with applicable IPR/copyright law. Portuguese public procurement law foresees that procurers can require in the tender specifications the transfer of IPR rights to the procurer. However, according to Portuguese copyright law, the moral rights related to copyrights belong in an inalienable way to the creator. Even in the existence or conclusion of an agreement for a commissioned work (e.g. public procurement contract) and even if economic rights are transferred, the creator shall continue to enjoy his moral rights. Only the economic rights can be transferred, assigned or licensed by the creator to another person/entity, on condition that there is a written agreement specifying this (e.g. a public procurement contract). In the absence of such written agreement, the Portuguese copyright law assigns by default copyright ownership to the creator. If the procurer wants to obtain specific economic rights on commissioned works (e.g. usage, licensing, modification, reproduction rights) he must require in the tender specifications the transfer, assignment or a license of those specific economic rights that he needs at equitable payment. Copyright law protects also scientific work, software and database rights.
Romania	There is no default scenario for the distribution of IPR rights between procurers and suppliers in Romania. The Romanian law, general terms and conditions for government contracts and guidelines on public procurement do not define how allocation of IPRs is best dealt with in procurement contracts. It is left to the individual responsibility of each Romanian procurer to specify clearly the IPR allocation for the procurement in its tender documents so that it stimulates innovation and is compliant with IPR/copyright law. However, the Romanian copyright act determines that copyright ownership belongs in an inalienable way to the creator (the moral rights may not be renounced or disposed of). The owner of the copyright, the creator, may transfer, assign or license only his economic rights by contract (e.g. public procurement contract) to other persons. If the procurer wants to obtain specific economic rights on commissioned works (e.g. usage, licensing, modification, reproduction rights) he must require in the tender specifications the transfer, assignment or a license of those specific economic rights that he needs at equitable payment. Copyright law protects also scientific work, software and database rights.
Slovakia	There is no default scenario for the distribution of IPR rights between procurers and suppliers in the Slovak Republic. The Slovak law, general terms and conditions for government contracts and guidelines on public procurement do not define how allocation of IPRs is best dealt with in procurement contracts. It is left to the individual responsibility of each Slovak procurer to specify clearly the IPR allocation for the procurement in its tender documents so that it stimulates innovation and is compliant with IPR/copyright law. However, the Slovakian copyright act determines that the entire copyright (both moral and economic rights) belongs in an inalienable way to the creator (both moral and economic rights are non-transferable

	and may not be waived by the creator). Therefore the copyright act determines that in the case of commissioned work, like in a public tender, (1) the public procurer obtains automatically the right to use the commissioned work but no other rights from the creator and (2) as the creator maintains the entire copyright, the creator also maintains the right to use and further develop and commercialise the commissioned work. Copyright law protects also scientific work, software and database rights.
Slovenia	The Slovenian law and general terms and conditions for government contracts do not define a default scenario for allocation of IPRs but the Slovenian ministry of public administration's guidelines on innovative / IT procurement states that that requiring more IPR than needed however negatively affects the price of offers and that the IPR requirements of the public procurer shall respect applicable IPR/copyright law and the principle of proportionality. Therefore it recommends that "*the public procurer requires only so much intellectual property (ownership of the source code) as it needs for fulfilling its basic objectives in using, maintaining and upgrading its solutions. This transfer to the public procurer should be non-exclusive, limited in time linked to the procurement need and the mandate of the public procurer's tasks. The contracting authority should not regulate the IPR rights of the contractor to ensure that contractors can also further commercialise products that result from the public procurement, according to their free entrepreneurship.*" Slovenian public procurement law foresees that procurers can require in the tender specifications the transfer of IPR rights to the procurer. However according to the Slovenian copyright act, copyrights belong to the creator (moral rights are non-transferable and only single economic rights (not all economic rights) may be transferred). Therefore the copyright act determines that in the case of commissioned work, like in a public tender, (1) the public procurer obtains automatically the right to use/distribute the commissioned work and the creator maintains the copyright as well as the right to use and further develop and commercialise the commissioned work.
Spain	The Spanish public procurement law assigns by default always usage rights to the public procurer. There is however no default regime defined for the allocation of IPR ownership rights across all types of public procurements. However, in order to ensure compliance with the Spanish intellectual property rights act, IPR ownership should be left with the suppliers. Indeed the Spanish IPR act 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. Unfortunately Spanish innovation procurement guidelines don't inform public procurers about how to best allocate IPRs in view of respecting IPR law, stimulating innovation and optimising value for money for the procurer. The benefits of leaving IPR ownership with suppliers and keeping usage rights with the public procurer are not explained in the guidelines.
Sweden	There is no default scenario for the distribution of IPR rights between procurers and suppliers in Sweden. The Swedish law on public procurement requires the public procurer to specify the distribution of IPR rights and obligations in the tender documents but the Swedish law, general terms and conditions for government contracts and guidelines for all public procurements do not define how IPR allocation is best dealt with in public procurement. It is left to the individual responsibility of each Swedish procurer to specify clearly the IPR allocation for the procurement in its tender documents so that its procurement stimulates innovation and is compliant with applicable IPR/copyright law. Swedish copyright law determines that the innovator owns the copyright if not otherwise agreed between procurer and supplier. Copyright may be transferred entirely or partially (e.g. via a public procurement agreement) subject to some limitations (removing name of author is only allowed for uses which are limited in the character and scope; the creator's right to remuneration cannot be transferred). Anyone who has acquired the right to use a computer program is entitled to make such copies of the program and to make such adaptations of the program which are necessary in order for him to use the program for its intended purpose. Copyright includes any literary, scientific and artistic work including computer programs. The national guidance document on PCP clarify that in PCPs, IPR ownership remains with the contractor and the procurer obtains license free rights to use and license.
Switzerland	The Swiss public procurement law does not define a default allocation of IPR rights between procurers and suppliers, but the 2010 Swiss general conditions of the federal government for research contracts (also applicable to R&D procurement contracts) defines that IPR ownership rights remain with the inventor of the idea. Derogation from the default scenario is possible if explicitly specified in the tender documents, but the general conditions warn procurers for the additional costs of acquiring exclusive ownership of IPR rights. The general conditions state that all aspects of IPR management (filing, defense, control, sales, usage, method used to valorise the IPRs and payment of IPR related costs) have to be clearly specified in the public procurement contract. It also explains that the public procurer can object to the publication/commercialisation of results by the contractor if there are "overriding public interests" which occur when: the results contain military secrets, the confidentiality of results is essential to maintain order and public safety (to avoid panic movements, etc.), the results undermine national security or binding legal provisions prohibit the publication of results. It is also important that the procurer specifies all IPR provisions in his tender documents in compliance with applicable IPR/copyright law. The Swiss copyright act determines that the moral rights belongs in an inalienable way to the creator, the economic rights can be assigned by the creator to another person. Therefore in the case of a commissioned work, like in a public tender, the public procurer does not automatically obtain usage rights related to commissioned works unless the tender documents required usage rights to be allocated to the procurer. Copyright law protects also scientific work, software and database rights.
UK	The UK law on public procurement does not define a default regime for IPR allocation between procurers and suppliers but the Crown Commercial Services' guidance and model public procurement contracts outline the UK government's policy on IPR allocation in public procurement: "*IPR should rest with the part that is best able to exploit it and reminds public procurers that demanding public ownership of all IPR may be seen as a disincentive for submitting offers in the first place. Unless otherwise provided for*

	in the contract, the IPR will vest in and remain the property of its recognised owner and the public procurer will acquire a license to use. The aim of this overarching policy is to achieve the best value for money for the government. Ownership of IPR carries responsibility for its protection and the potential liabilities should there be a claim from a third party that the IPR infringes their own IPR. These responsibilities can have significant cost and risk implications. Exploitation of IPR, for example the charging and collection of associated 'royalty' payments, requires commercial skill and resource. Government departments often do not have this, nor is the commercial exploitation of IPR usually part of their core business". In cases where the government wants to make software after the procurement available as open source, it can acquire all IPR developed during the procurement. The policy recommends to reflect carefully whether this is really needed because it would be too expensive to use as general approach for all contracts. Also in the field of defence, the UK Ministry of Defence's Intellectual Property policy states that in general intellectual property can be best exploited by the contractor that generates it, therefore the default rule is that the ownership of IPR will be left with the contractor unless the specific circumstances of the case require otherwise. All above provisions were made in compliance with UK copyright law which determines that copyright (both moral and economic rights) can be assigned by the creator to other parties (e.g. via a public procurement contract). Copyright law protects also scientific work, software and database rights.