THE IMPLEMENTATION OF THE INNOVATION PARTNERSHIP PROCEDURE IN PUBLIC PROCUREMENT

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CONTENTS

GLOSSARY

GPA	Government Procurement Agreement
WTO	World Trade Organisation
Directive 2014/24/EU	Directive 2014/24/EU on public procurement and repealing Directive 2004/18/EC
Directive 2014/25/EU	Directive 2014/25/EU on procurement by entities operating in the water, energy, transport and postal services sectors and repealing Directive 2004/17/EC
Innovation	Implementation of a new or significantly improved product, service or process, including but not limited to production, building or construction processes, a new marketing method, or a new organisational method in business practices, workplace organisation or external relations
Research and Development Activities (R&D)	All activities comprising fundamental research, applied research and experimental development where the latter may include the realisation of technological demonstrators, i.e. devices demonstrating the performance of a new concept or a new technology in a relevant or representative environment
Fundamental Research[1]	Research including experimental or theoretical work undertaken primarily to acquire new knowledge of the underlying foundations of phenomena and observable facts, without any direct practical application or use in view
Applied Research	Research through which application of the results of the fundamental research into practice is sought and which are often closely related to the technique and technology in solving cognitive, social and practical problems
CPV	Common Procurement Vocabulary
PPR	Public Procurement Register
OJ of EU	Official Journal of the EU

[1] See Scientific Research Promotion Act

LIST OF FIGURES

1. BACKGROUND[i]

As part of the implementation of the common European reform in the public procurement sector, the new Directive 2014/24/EU and Directive 2014/25/EU introduced for the first time a procedure for selecting an "innovation partnership" contractor. It aims to set up a specialised and flexible mechanism for satisfying the contracting authorities' needs to develop innovative products, services or works. The differentiation of the Innovation Partnership as a set of rules for conduct of a selection procedure for a contracting authority for public procurement contracts with a specific subject, is not an objective *per se*. In this sense, it is directly linked to the implementation of "Europe 2020" Strategy[2] and in particular to achieving its priorities relevant to the research and development activities and thus to attaining smart, sustainable and inclusive growth of the Community. This circumstance particularly stands out in the definition of "innovation" laid down in the directives. The objectives of "Europe 2020" Strategy[3], themselves, have been adopted and considered as national objectives by the adoption of the National Development Programme: Bulgaria 2020[4] which also lays emphasis on supporting research and innovation activities as primary means for the overall improvement of the competitiveness of the Bulgarian economy. This is further confirmed by the European legislator who places the research and innovations among the main drivers of future growth in the directives of 2014. The contracting authorities are thus encouraged to make the best strategic use of public procurement to spur innovation. Purchasing innovative products, works and services plays a key role in improving the efficiency and quality of public services and contributes to achieving best value for public money as well as wider economic, environmental and societal benefits in terms of generating new ideas, translating them into innovative products and services and thus promoting sustainable economic growth.

The historical review indicates that the award of research and development activities was given a prominent position back in the Government Procurement Agreement (GPA) of the World Trade Organisation (WTO) [5], which in turn has a significant influence on the content of the already repealed Directive 2004/17/EC[6] and Directive 2004/18/EC[7]. From the date of entry into force of the original version of the GPA on January 1, 1996 and subsequently by the directives repealed in 2014, the foundations for outlining two alternatively applicable approaches have been laid down – i.e. "Pre-commercial procurement" on the one hand and "Public Procurement for Innovations", on the other.

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[2] See COM (2010) 2020.

[3] Apart from "Europe 2020" Strategy, a number of documents of international organizations are also significant for the European policy in the field of innovation. Such an example is the initiative OECD Strategy Innovation and the prepared within it strategic and statistical documents aimed at proper planning, implementation and assessment of innovative activities.

[4] Council of Ministers Decision No. 1057 of 27.12.2012

[5] See Art. XIII, letter "e" of the Government Procurement Agreement of the World Trade Organisation (available in English language); original version - in force since January 1, 1996; latest revision - effective from April 6, 2014

[6] See Art. 24, letter "e" of the Directive 2004/17/EC of the European Parliament and of the Council of 31 March 2004 coordinating the procurement procedures of entities operating in the water, energy, transport and postal services sectors.

[7] See Art. 16, letter "f"of the Directive 2004/17/EC of the European Parliament and of the Council of 31 March 2004 on the coordination of procedures for the award of public works contracts, public supply contracts and public service contracts

Pursuant to the directives of 2004, the research and experimental developments where the benefits accrue exclusively to the contracting authority for its use in the conduct of its own affairs, on condition that the service provided is wholly remunerated by the contracting authority, remain outside the scope of the European legislation in the area of public procurement. By outlining this specific case excluded from the public procurement regime, a new definition of the term Pre-commercial Procurement indicating its scope as well, has been introduced: 1) it refers to research and development services only; 2) it is implemented upon applying the risk-benefit sharing between the participants (contracting authority/-ies and contractor/-s); and 3) does not include subsequent marketing, i.e. – subsequent purchase of products, services and works which have been developed as a result of research and development activities. Based on the above the "Public Procurement for Innovations" which falls within the scope of public procurement can be defined as follows: 1) it refers to research and development services; but also to 2) purchase of the developed innovative product, service or works; and 3) without risk-benefit sharing between the participants in the process (i.e. full remuneration by the contracting authority regardless of the outcome)[8].

The above concepts remained effective and were further developed in the new Community legislation both by means of introducing the Innovation Partnership procedure in the legislation and by explicitly defining its scope[9]. Upon the adoption of the new Public Procurement Act[10], the Innovation Partnership has been transposed into the Bulgarian legislation as well.

2. SCOPE AND APPLICATION OF THE INNOVATION PARTNERSHIP

Innovation Partnership is defined as a specific public procurement procedure providing the contracting authority with the possibility of "establishing partnership with one or more partners who carry out a particular research and development activity". Apart from being defined at the level of an award procedure, the Innovation Partnership is defined as a specific public procurement contract aimed at the "development of an innovative product, service or works and the subsequent purchase of the resulting supplies, services or works". It is evident that the characteristic of the Innovation Partnership is closely linked and is based on the concepts of "innovation", "research and development", "fundamental research" and "applied research" [11]. It is through them that the nature, scope and application of this new procedure are defined.

A significant moment when defining the application of Innovation Partnership is the fact that PPA excludes from its scope the research and development services[12] in the cases where 1)

[8] See detailed description of the differences below in the document

[9] See Art.14 of Directive 2014/24 and Art. 32 of Directive 2014/25

[10] Prom. SG issue 13 of February 16, 2016, effective from April 15, 2016

[11] The distinction between fundamental and applied research is in fact indicative since the fundamental research may often have an immediate practical value whereas the apllied research may result in scientific discoveries. This can be exemplified by the photoelectric effect discovered by Heinrich Hertz in 1887 and explained by Albert Einstein in 1905. A few decades passed though until the practical benefits of this discovery were exploited, e.g. the cathode-ray tube. An example of the contrary can be given by the fundamental research which led to the discovery of X-rays whose practical reimplementation occurred almost immediately after their discovery.

[12] On the ground of an argument under Art. 14 of Directive 2014/24 these services may further be specified as: research and development services and related consultancy services (code under CPV 73000000-2); research and development services (code under CPV 73100000-3); research services (code under CPV 73110000-6); research in the natural, medical, agricultural and engineering sciences (code under CPV 73111000-3); research

the benefits do not accrue exclusively to the contracting authority for its use in the conduct of its own affairs; and 2) the service provided is not wholly remunerated by the contracting authority.

Furthermore, pursuant to the law the application of the Innovation Partnership cannot be an objective per se and is related to the presence of two other absolute prerequisites. Firstly, there should be an actual need for innovative product, service or works. This circumstance needs to be thoroughly investigated by the contracting authority, and the conclusions of such study presupposing its existence – to be justified. The other prerequisite is expressed as a failure to satisfy the identified need by the available market proposals proven by the contracting authority.

All of the above allows a clear definition of the application and scope of the Innovation Partnership. **Firstly**, it refers to satisfying specific contracting authority's needs which cannot be satisfied by the available market solutions. Since each public procurement is related to satisfying certain public needs, the case where the market fails to satisfy the identified need, is exactly the peculiarity presupposing the impossibility or the inappropriateness of the application of the traditional methods for award. This, **secondly**, justifies the need for research.

Carrying out the research activities is dependent on specific scientific methods and methodologies that are aimed at achieving certain scientific results in terms of creating new knowledge or expanding and enriching the existing one in a particular scientific field[13]. Since there are no generally applicable scientific approaches, the choice of method to be applied will depend on the science and the assigned task. In general, a research goes through the stages of: monitoring; determining the problem; formulating a hypothesis; determining the logical consequences of the hypothesis (predictions); collecting information for verification of the predicted consequences; verification (performing an experiment); analysing and drawing conclusions; preparation of theory. The research may be structured as a cyclic or a linear process based on a series of iterations. Considering this the research may be aimed at acquiring new knowledge; and/ or searching, evaluation and final selection for the application of research findings or other knowledge and expertise; and/ or searching alternatives for materials, devices, products, processes, systems or services; and/ or formulation, design, evaluation and final selection of possible alternatives for new or improved materials, devices, products, processes, systems or services[14]. Depending on the

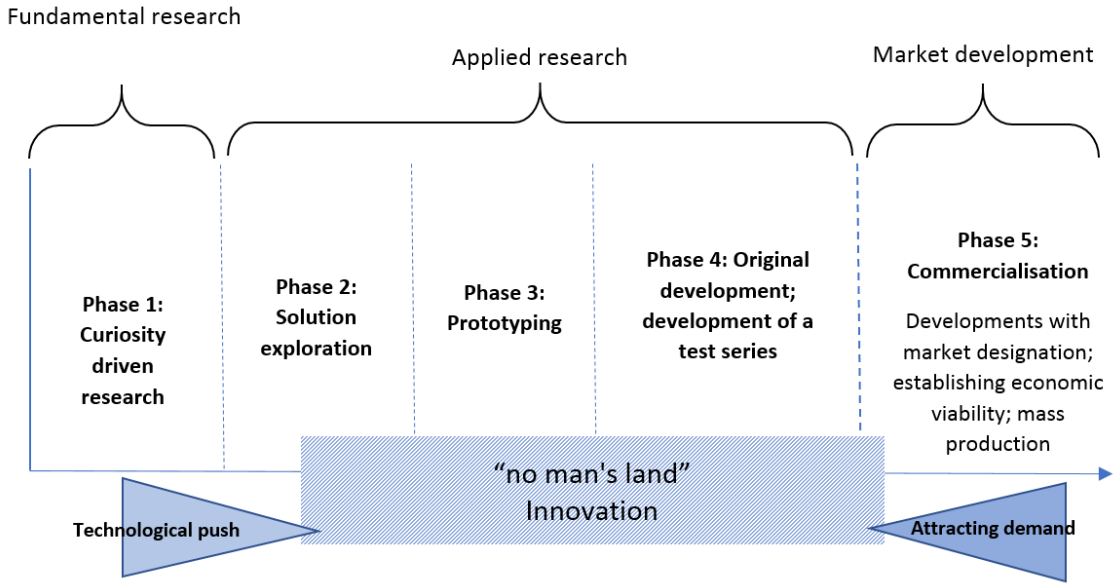
in chemistry and biology (code under CPV 73112000-0); experimental development services (code under CPV 73120000-9); design and execution of research and development (code under CPV 73300000-5); pre-feasibility study and technological demonstration (code under CPV 73420000-2); test and evaluation (code under CPV 73430000-5).

[13] It should be noted that the achieved result may differ from the desired or the presumed one, but it will not change its nature of a result. This is another point that distinguishes Innovation Partnership from the traditional public procurement contracts which are normally based on contractual and commercial law logic relating to the achievement of a specific result of the implementation. Any performance that deviates from the parameters of the contract (included in the technical specifications of the contracting authority, the technical and cost proposals for implementation and the draft contract) and impeding the achievement of the desired result may give rise to a contractual liability. In the case of Innovation Partnership this approach may be applicable mainly with respect to its final stage which refers to the implementation (purchase) of the develop innovative product, service or works.

[14] See in this context Accounting Standard 38 - Intangible Assets (adopted by Council of Ministers Decree No. 46 of 21.03.2005 r.; Prom. SG, issue 30 of 07.04.2005, effective from 01.01.2005, last. amend. SG issue 86 of 26.10.2007, effective from 01.01.2008) and International Accounting Standard 38 - Intangible Assets.

results of the research and establishing the possibility for its further development, the application of the Innovation Partnership may extend, **thirdly**, beyond development activities. The concept of "development activities" is not clearly defined in the legislation, but in practice it is considered to refer to the practical application of the research findings or other knowledge in a plan or scheme for the production of new or substantially improved materials, devices, products, processes, systems or services prior to starting the commercial production or use in the entity's activities (the contracting authority)[15]. Development activities may include: design, construction and testing of pre-production prototypes and models; and/ or design of tools, matrixes, samples and others involving new technology; and/ or design, construction and operation of a pilot plant that is not of a scale economically feasible for commercial production; and/or design, construction and testing of a chosen alternative for new or improved materials, devices, products, processes, systems or services. The pure research and development activity is completed upon reaching the stage of initial development. This stage, **in fourth place**, refers to the development of limited quantities of a prototype product or service in the form of a test series so as to incorporate the results of the field testing and to demonstrate that the innovative product, service or works is suitable for the production or supply in a quantity covering the acceptable quality standards[16].

Figure 1. Research and development activity



In this sense, the initial development stage does not include the developments with market designation, such as mass production, deliveries for the purpose of establishment of the economic viability or reimbursement of expenses for research and development activities, integration, fulfilment of specific requirements of the contracting authority, stage-by-stage modifications and improvements of the existing products or processes. These activities, **in the fifth place,** fall within the commercialisation stage (market development) of the developed innovative product, service or work, comprising the delivery, implementation or

[15] See again there.
[16] See Art. XIII, letter "e" of the GPA of the WTO,

construction satisfying the specific need of the contracting authority which was the reason for establishing the Innovation Partnership.

3. THE INNOVATION PARTNERSHIP AS A PROCESS

The outlined above scope and application of the Innovation Partnership allow considering it an integrated process from the establishment of the specific need to the commercialisation of the eventually developed innovation aimed at satisfying the specific need. In the context of public procurements, this process involves:

3.1. PHASE 1: ESTABLISHMENT AND IDENTIFICATION OF THE NEED

This phase comprises the establishment and identification of the specific need of the contracting authority. The establishment and identification of the need may be the result of intentional actions (for instance, as a result of conducted needs assessment); may result from other research; may ensue from the necessity of applying a specific national or local strategy or policy; may be established in the course of the contracting authority's usual activity. The main result of its implementation will be the initiation of the process of reasoning the lack of a market solution, and in this sense – the reasoning of the necessity of conducting research, development and application of a unique product, service or work.

3.2. PHASE 2: PREPARATORY PHASE DEFINING THE INSTRUMENTS FOR SATISFYING THE IDENTIFIED NEED

This phase is directly and inextricably bound with the establishment and identification of the need. Its main function is to determine the expedient and lawful actions for finding the relevant solution, providing them with content and planning their performance. The said actions are related to:

- Capacity building

The availability of expertise is of key importance to meet the challenges related to the development of innovations and to be committed to the planning, structuring and management of the Innovations Partnership. Should it prove that the contracting authority does not have the adequate capacity to determine the parameters of the future solution, the involvement of external expertise will be necessary for the purposes of preparatory actions for a (possible) future procedure as well as in connection with the performance of the Innovation Partnership contracts. This external expertise will be subject to other public procurement contracts and shall be engaged within a separate selection of a contractor(s) following the respective applicable procedure by law.

- Preliminary market consultations

It is of primary importance for the next steps to be taken to consider to what extent the contracting authority knows the market – both with regard to offered solutions and with respect to the potential contractors. In this regard, should it prove that the contracting authority's knowledge of the market is insufficient, then market consultations will be recommendable.

- Assessment of the necessity of applying an innovative product, service or work; choosing the means of implementation

The planned scope and intensity of the research and development activity to be performed are of key importance for making the assessment. In this regard, if it proves that these

activities have a considerable scope and intensity and/or that there are reasonable possibilities of risk diversification (mainly by sharing the necessary financing with the private sector and the ownership of the developed innovations), it could be assessed that the use of mechanisms other than the public procurements is more expedient and guarantees more effective and efficient implementation. In such case, it would prove advisable to apply alternative means for performance of research and development activity (for instance, by "pre-commercial procurement"). It is also possible to determine that the intended result could be achieved by consistent application of the traditional instruments for selection of public procurement contractors, instead of the Innovation Partnership.

- Determining a lawful and expedient means for creation of an innovative product, service or work, and in this regard – applying Innovation Partnership

If the application of the Innovation Partnership procedure proves to be a prerequisite for optimum outcomes, then the preparatory actions should include:

- Preparation of description of the identified needs to allow the interested persons to determine the nature and scope of the sought solution and to decide whether to participate in the future procedure;
- Determining the selection criteria; the selection criteria should be bound with the assessment of the technical and professional capabilities of candidates in the R&D sphere and the development and implementation of innovative solutions;
- Specifying the award indicators, within the criterion of optimum quality/price ratio, for the purpose of partner(s) selection;
- Determining the conditions for conducting the negotiations, and in cases it could be carried out in stages for the purpose of reducing the number of tenders – determining the conditions therefor;
- Determining the R&D stages and the conditions for provision of the innovation; the R&D stages should be determined in compliance with the steps in the process of scientific research and innovations, which might include the manufacturing of products, services provision or work performance; each stage should be defined by the achievement of particular intermediate targets;
- Determining the R&D financial parameters and the financial parameters of the provision of the innovation; including the instalments for payment of the respective remuneration upon achievement of the respective intermediate targets;
- If reduction of the number of partners is possible – determining the conditions therefor by termination of particular contracts;
- As far as the Innovation Partnership is characteristically long-term, determining whether there are prerequisites for derogation of the maximum 5-year term of public procurement contracts and justifying the application of a longer term.

3.3. PHASE 3: IMPLEMENTATION OF INNOVATION PARTNERSHIP PROCEDURE.

In its essence, the Innovation Partnership procedure is based on the rules for conducting the competitive procedure with negotiation, respectively – on negotiations with a prior call for competition:

- Publication of opening decision, contract notice and public procurement documentation;
- The term for submission of requests to participate starts running as of the date of publication in the national Public Procurement Register or OJ of the EU. The said term may not be less than 30 days;
  - The interested persons can make proposals for amendments in the public procurement documentation within 10 days as of the publication of the contract notice in the Public Procurement Register announcing the opening of the public procurement procedure;
  - Possibility for a single amendment in the public procurement documentation or provision of additional information by the contracting authorities within 14 days as of the publication in the national Public Procurement Register of the contract notice announcing the opening of the public procurement procedure;
  - Possibility for requesting explanations on the public procurement documentation within 10 days before expiry of the term for receipt of the requests to participate;
  - Appointment of the evaluation commission;
- Expiry of the term for submission of requests to participate;
- Conduct of a public meeting of the evaluation commission for opening the submitted requests to participate;
- Conduct of closed meetings of the evaluation commission for the purposes of pre-qualification and preparation of minutes specifying the results.
  - When the evaluation commission establishes any omission, incompleteness or discrepancy of the information, including irregularities or factual mistakes, or non-compliance with the requirements to the personal situation or the pre-qualification criteria, the commission specifies them in the minutes and sends it to all candidates;
  - Within 5 business days as of receipt of the minutes, the candidates with established discrepancy or lack of information may present to the commission a new ESPD and/or other documents which contain the amended and/or supplemented information. The additionally provided information may also cover facts and circumstances which occurred after the deadline for receipt of tenders or requests to participate. This opportunity is also applicable to the subcontractors and the third parties specified by the respective candidate. Subcontractors or third parties may be replaced upon establishing that they fail to meet the contracting authority's requirements, but only when this does not entail any change in the technical proposal;
  - After expiry of the 5 business days' term the commission commences examining the additionally provided documents with respect to the compliance of the candidates with the requirements to the personal situation and the pre-qualification criteria;
  - A selection should be carried out on the basis of the objective and non-discriminatory criteria specified in the contract notice, in case a possibility is

provided for reduction of the number of candidates, that meet the selection criteria, and if the number of candidates having submitted requests to participate and meeting the selection criteria exceeds the announced maximum number of persons to be invited to present preliminary tenders and to participate in the negotiations; the minimum number of candidates in an innovation partnership shall not be less than three candidates; in any case, the number of the invited candidates should be enough to guarantee effective competition;

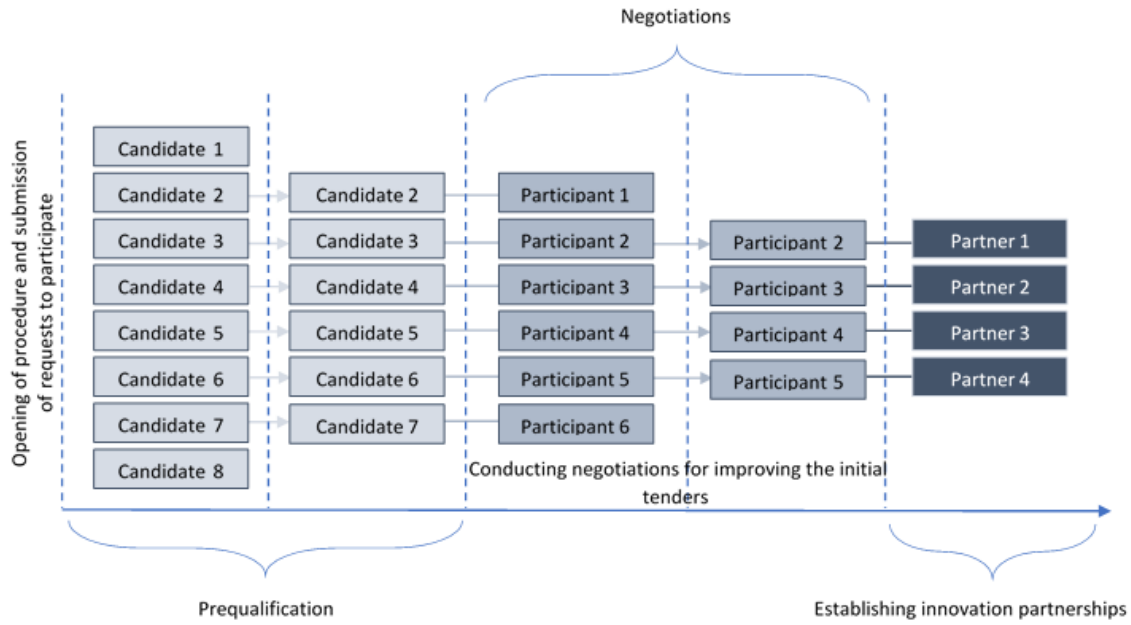
- The evaluation commission provides to the contracting authority the minutes with the results of the preliminary selection.

- The contracting authority announces by a decision the candidates to be invited to present their tenders, as well as the candidates that do not meet the contracting authority's requirements and the argumentation therefor;
- After entry into force of the pre-qualification decision, the contracting authority sends an invitation for presenting the preliminary tenders and participation in negotiations to the respective candidates. The invitation has to contain at least: a reference to the published contract notice; deadline for receipt of the tenders, the address to which the tenders must be sent and the language or languages in which the tenders must be drawn up; a reference to any documents, including certificates, to be submitted, in support of or in addition to the circumstances and information specified in ESPD; the award criteria, and where appropriate, the evaluation indicators, their relative weighting or, where appropriate, the descending order of importance for such indicators (where they are not specified in the contract notice or the technical specifications);
- The evaluation commission conducts negotiations with the participants for the improvement of the content of the preliminary and subsequent tenders in compliance with the conditions set by the contracting authority. The minimum requirements and evaluation indicators are not subject to negotiations and amendments. The final tenders of the participants are not subject to change either.

  - If staged implementation of the negotiations is envisaged, in order to reduce the number of tenders, the evaluation commission applies the award criteria and the evaluation indicators specified in the contract notice;
  - The tenders are evaluated according to the indicators set by the contracting authority, included in the criterion of optimum quality/price ratio;
  - Upon conducting the negotiations, all participants whose tenders have not been dismissed are notified in writing of any changes in the technical specifications or in any other document from the public procurement documentation other than the one specifying the minimum requirements; after the introduction of such changes, the participants are given enough time to amend and present again the amended tenders;
  - The contracting authority (respectively the evaluation commission) shall not disclose the proposals or any other confidential information received from a participant in the negotiations to the other participants without the respective participant's explicit consent for each particular case;

- The commission prepares minutes on the results of its work, which, inter alia, contains information regarding the actions in connection to the opening, examination and evaluation of each tender and conducted negotiations; participants' ranking; proposal for disqualification of the tenderers, where applicable; reasons for the admission or disqualification of each tenderer; proposal for conclusion of an innovation partnership agreement with the first-ranked tenderer, respectively – proposal for conclusion of innovation partnership contracts in compliance with the contracting authority's conditions and the tenderers' ranking; or proposal for termination of the procedure on the relevant legal grounds, where applicable;
- On the basis of the minutes the contracting authority issues a decision on the ranking of tenderers and selection of a partner(s). After entry into force of the decision, the parties agree on the date and manner of conclusion of the contract(s);

Figure 2. Scheme of the Innovation Partnership as a procedure



3.4. PHASE 4: CONDUCT OF RESEARCH AND DEVELOPMENT ACTIVITY UNDER THE INNOVATION PARTNERSHIP CONTRACT(S)

This phase is the start of the effective implementation of the Innovation Partnership. The conduct of the R&D activities should be structured in successive stages in accordance with the steps of the scientific research, reflecting the level of innovation and the sequence of the necessary research and innovation activities for the development of the innovative solution. For the completion of the separate stages intermediate targets should be planned and reached with their respective parameters (including the related financial conditions). One of the purposes of the R&D activities is to reach a solution with an estimated value compatible with the investment necessary for its development.

Upon programming the Innovation Partnership, the contracting authority may plan its performance under conditions of competition among the partners. In such cases, the contracting authority may reduce the number of partners by terminating the particular contracts in compliance with pre-determined conditions in this respect. Such approach is applicable only where the Innovation Partnership is implemented on the grounds of multiple

contracts concluded by the contracting authority with several partners, as a result of the conducted procedure, and constitute in practice the performance of one and the same task. The competition approach to the implementation of the Innovation Partnership is deemed to lead to better balance between the risks and advantages, being a prerequisite for the achievement of better quality/price ratio of the created innovation.

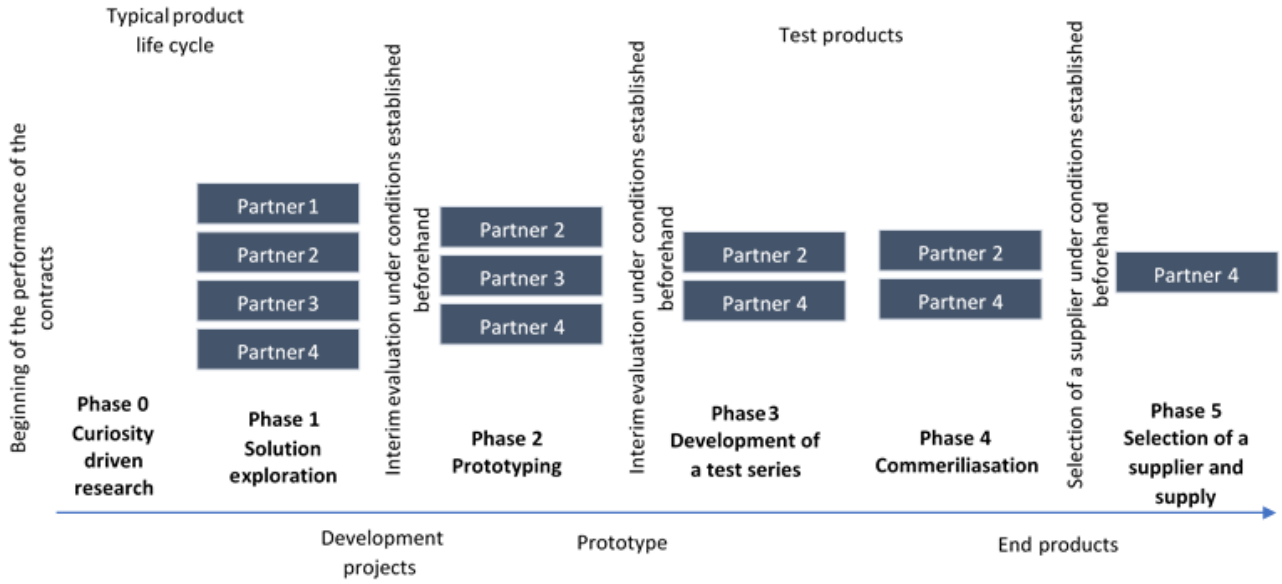
3.5. PHASE 5: COMMERCIALISATION (MARKET DEVELOPMENT) OF THE INNOVATION

This is the final phase of implementation of the Innovation Partnership in which the contracting authority purchases the developed innovation. With regard to the cases of innovation partnership based on contracts with several partners, the following specificity should be noted: PPA does not set a requirement for the admission of just one partner to the phase of commercialisation, and in this sense – one supplier.

Regardless of the application of the possibility of reducing the number of partners, the existence of contracts with two or more partners is admissible by law at the phase of market development. In this sense, at the very preparation of the procedure for selection of partners, the contracting authority should determine a mechanism for regulating the issues related to the selection of a supplier(s). Among the various possible mechanisms the following could be outlined:

- Determining a procedure for selection of one supplier among the partners for the full quantity;
- Determining the procedure for selection of suppliers among the partners for making successive purchases until reaching the full quantity; a separate selection of supplier is carried out for each purchase;
- Pre-determining of particular but different parts of the total quantity to be bought and procedure for designating the partner in charge of the delivery of the respective quantity;
- Pre-determining of particular equal parts of the total quantity to be purchased from the partners; etc.

Figure 3. Implementation of the Innovation Partnership

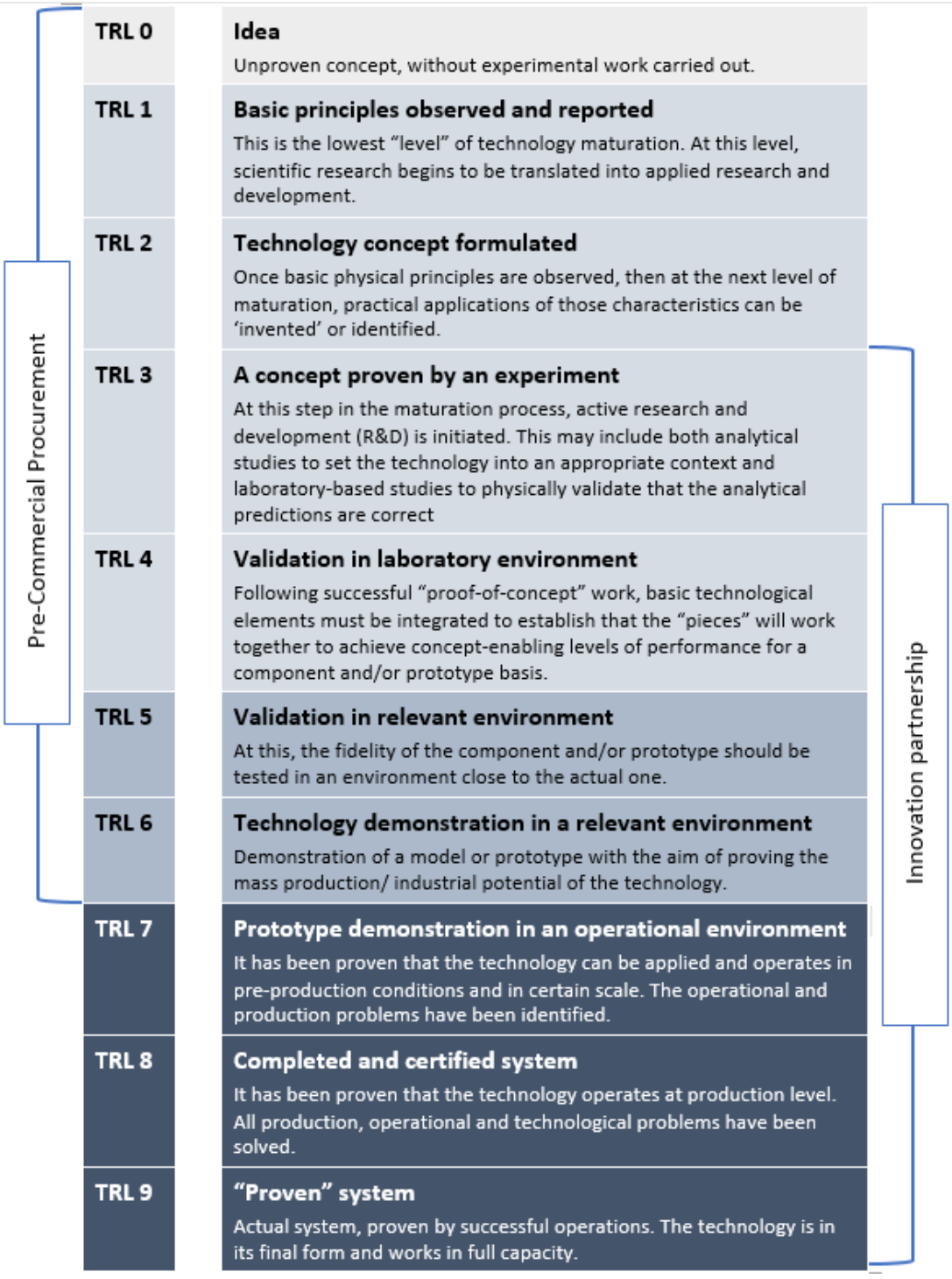


4. DIFFERENTIATING THE INNOVATION PARTNERSHIP FROM SIMILAR FORMS

4.1. DIFFERENTIATING THE INNOVATION PARTNERSHIP FROM SIMILAR METHODS OF CONDUCT OF R&D ACTIVITY

As mentioned above, the Innovation Partnership proves to be one of the two main methods of conduct of R&D activity in the public sector within the EU.

Figure 4. Differentiation between the Innovation Partnership and Pre-Commercial Procurement in terms of their scope



The other method is the so called Pre-Commercial Procurement'. Despite the similarities between the Innovation Partnership and Pre-Commercial Procurement, there are certain differences between them concerning not only the necessary prerequisites for their implementation, but also their content and scope. With a view to these differences, they are applied alternatively[17] and may be divided in two main groups – those pertaining to

[17] Note that the comparison between them is possible only if the Innovation Partnership is regarded as an integrated process.

legislative requirements and those pertaining to the practical aspects of the innovation implementation.

The legal requirements, as already mentioned, are based on GPA of WTO, Directives 2014/24 and 2014/25, at the national level – Art. 13, Para. 1, item 15 of the PPA, and refer to whether the R&D activity falls within the scope of the public procurement regime.

In order to apply the public procurement regime, the following two conditions should be fulfilled: the benefits should arise entirely for the contracting authority to use them in carrying out its activities; and the service provided should be entirely remunerated by the contracting authority[18]. Otherwise, the Pre-Commercial Procurement should be applied.

Innovation Partnership and Pre-Commercial Procurement could be compared to the level of their scope. As recognized in the practice, in cases where there is no substantial degree of maturity of the scientific concept that is supposed to be used to satisfy the needs of the public sector, it would be better to implement the Pre-Commercial Procurement. This approach is often justified in connection to the implementation of a more balanced risk allocation and funding of research and development. In this sense, Pre-Commercial Procurement should be preferred in cases where the development of innovation will have to be preceded by research activities significant in terms of volume and intensity, that cannot be bound to the achievement of a specific result. Innovation Partnership would be recommended when the innovation to be implemented is at a more advanced stage of development. The aforementioned could be illustrated through the system for measurement of technological readiness levels applied to measure the maturity of a particular technology and the consecutive comparison of the maturity of different types of technologies.

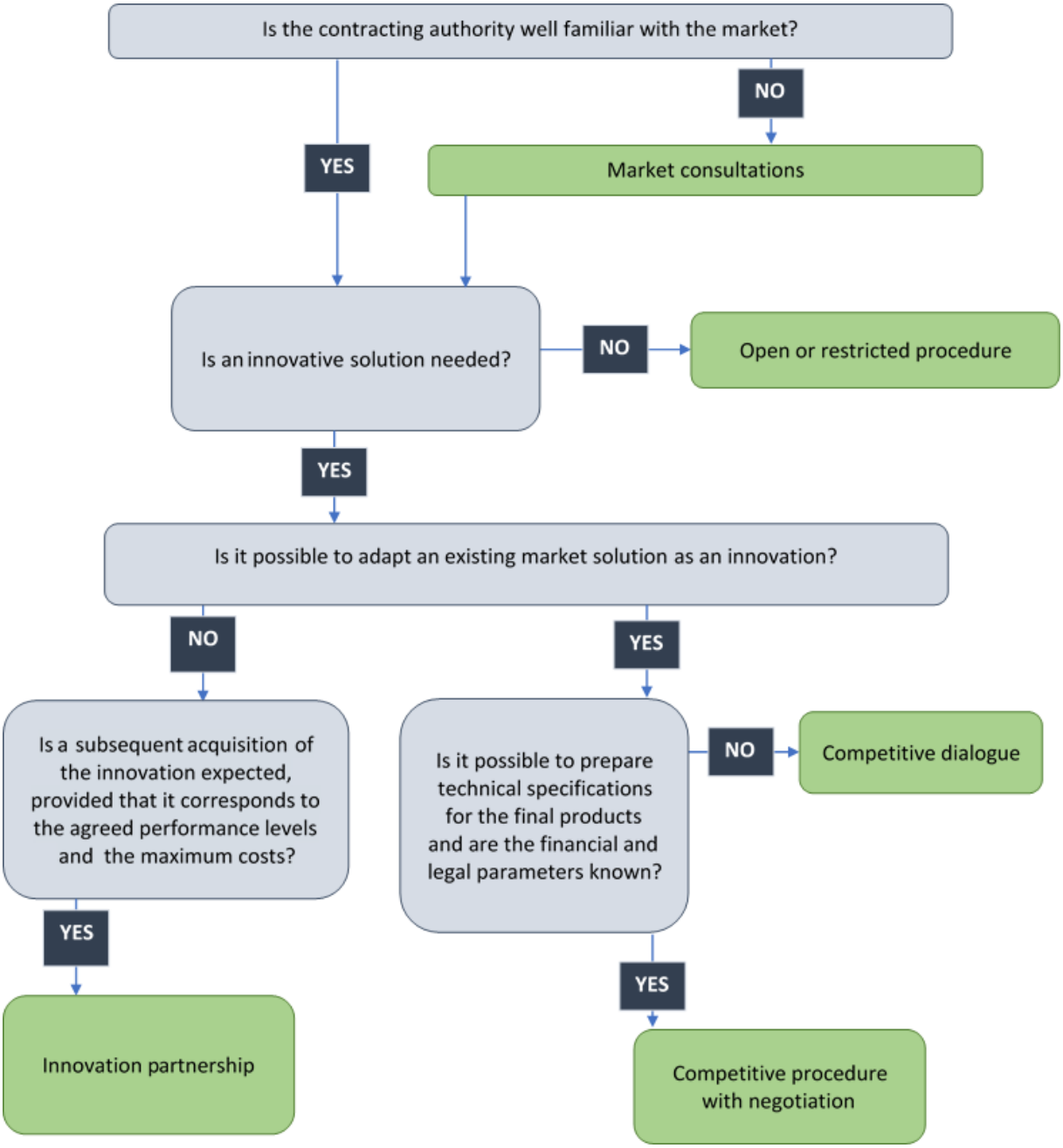
4.2. DIFFERENTIATION OF INNOVATION PARTNERSHIP FROM SIMILAR PROCEDURES FOR AWARDING OF A CONTRACT

Within the public procurement regime, Innovation Partnership is characterized by the presence of similar characteristics as in the rules for implementation of the procedure, as well as in the essence of the activities carried out through it. Argument in favour of this statement is the fact that Innovation Partnership is based on the rules for implementing competitive procedure with negotiation, respectively – negotiated procedure with prior call for competition[19].

[18] These conditions will not be fulfilled in certain cases of redistribution of risks associated with funding and/or achieving certain results. Such an example could be given to methods of settlement of intellectual property rights on products from R&D process. In some cases, it may be more feasible for the contracting authority to not acquire the intellectual property, which shall remain with the contractor/s, at the expense of a lower cost for development and delivery. In such cases the rule for exclusion of the public procurement regime will be applied, which is related to the fact that the benefits will not occur exclusively for the contracting authority. In any case of settlement of intellectual property rights a few conditions should be included in order to ensure the possibility for future purchases to be carried out and the possibility for complete and sufficient use of the developments by the contracting authority.

[19] See Communication 49 to Directive 2014/24.

Figure 5. Differentiation of Innovation Partnership from similar procedures for awarding of a contract



On the other hand, the conduct of R&D is not reserved for the scope of Innovation Partnership solely. Using a competitive procedure with negotiation or competitive dialogue may also be justified by the necessity of elaborating a solution, related to innovations[20]. Which of methods for awarding of a contract will be applied depends on the absence or presence of certain conditions as illustrated above.

[20] Similarly to utilities' sector contracting authorities. Besides applying the negotiated procedure with prior call for competition and the competitive dialogue, the negotiated procedure without prior call for competition could also be applied for carrying out research activities, experiment, study or development (in case the public procurements do not include the production in quantities which allow for sufficient marketing or for covering the costs of research and development).

These conditions are essential for the process of decision-making and the evaluation of their lack or presence shall be made during preparation of the future procurement procedure.

5. RISKS AND BENEFITS OF THE IMPLEMENTATION OF INNOVATION PARTNERSHIP

Innovation Partnership is a complex and lengthy process which requires the commitment of significant resources in every aspect – both by the contracting authority and the candidates, tenderers, and subsequently – by the selected partners. The benefits, which its introduction brings as part of the public procurement regime, are related to the fact that it establishes a uniform approach to structuring the activities, accompanying research and development activities and commercialization activities of innovative solutions. Thus, a possibility of fragmenting the stages in the development of the innovation and the implementation of separate subsequent procedures is created. Next, the fact that Innovation Partnership is based on the rules of competitive procedure with negotiation (respectively – of negotiated procedure with prior call for competition) allows for comparatively more flexible rules for awarding.

At the same time, however, Innovation Partnership is characterized with a significant level of complexity, given the specific scope of the activities to be performed within it. In this sense, a number of risks to its implementation could be outlined. These risks could be grouped in the following main categories:

- Technological risks

These are risks the implementation of which would often lead to non-innovation, creation of innovation with weaker-than-desired results or falsified results, due to reasons related to technical operation. These are also the risks arising from the inability of selected partners to provide the demanded solutions, choice of incorrect or sub-optimal technology, premature choice of technology, unsuccessful establishment of technological compatibilities, inability of self-development of solutions or inability to obtain the required components and knowledge, contrary to the proposals made within the procurement procedure.

- Market risks

These are the risks associated with lack of potential or actual partners to develop and / or deliver the sought innovation. Often these risks arise from too detailed and strict requirements set in the technical specifications.

- Organizational risks

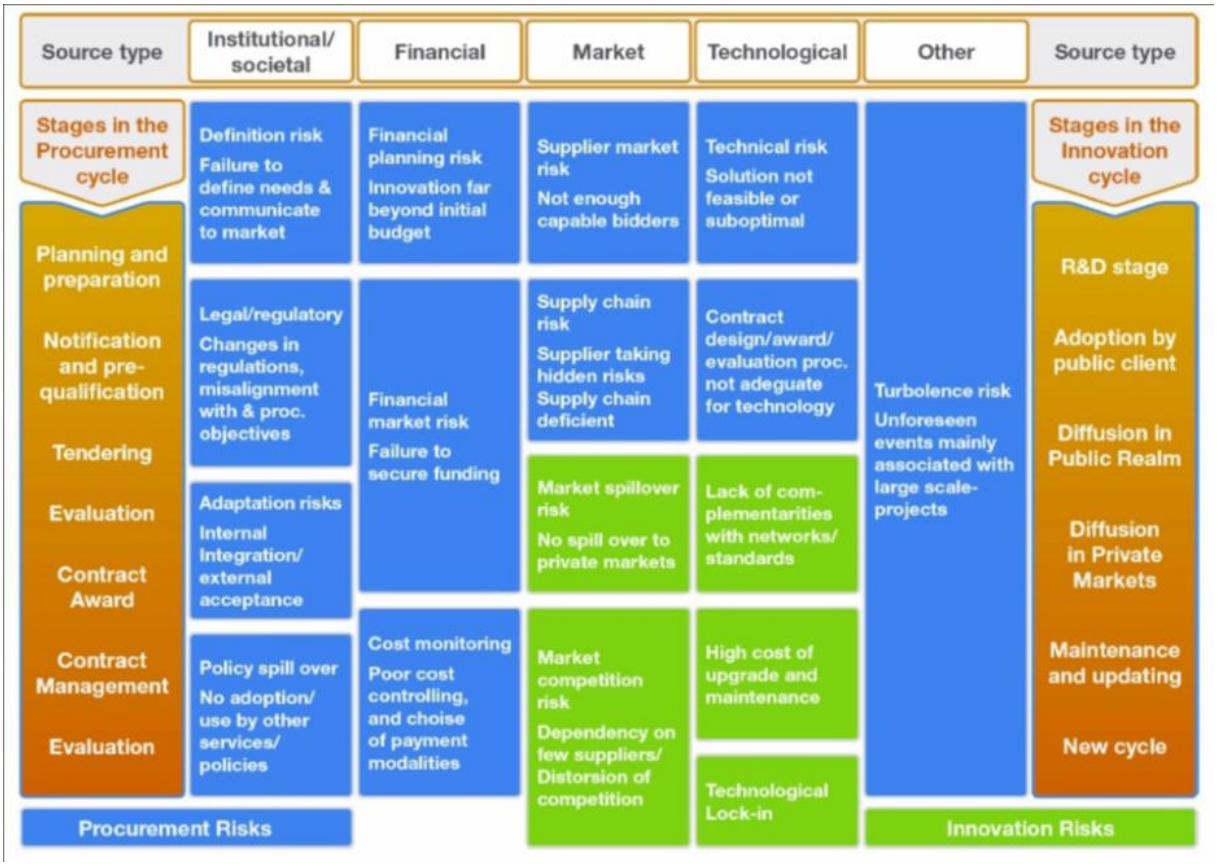
These are the risks associated with failure or improper implementation of the public procurement for reasons that can be attributed to the organization of the award process and the implementation process (both by the contracting authority and the partners). As a result, it is possible to come to a misallocation of resources. However, Innovation Partnership is a time-consuming and expensive process that requires focused coordination between all stakeholders, continuous evaluation and training.

- Financial risks

These risks develop in two main directions. On one side stands the uncertainty regarding the achievement of set targets, in accordance with the legal requirement the estimated value of

the acquired innovation to be proportionate to the investment needed for its development. On the other hand, the financial risks are related to the provision of the necessary funding.

Figure 6. Table of main risks[21]



- Turbulence risks resulting from the implementation of large-scale projects

These risks may be associated with a wide range of unforeseen circumstances leading to the necessity of a subsequent assessment of priorities and changing the expectations of the involved stakeholders. This could lead to the adoption of inadequate or incorrect decisions that could compromise the overall development of the innovation.

6. APPLICABILITY OF INNOVATION PARTNERSHIP IN EU FUNDED PROJECTS AND PROGRAMS

The review of the national operational programs financed by the structural and investment funds shows that the implementation of Innovation Partnership is generally admissible. However, the specific requirements for the preparation of project proposals on the base of which contracting authorities are to receive funding to conduct one or other activity, make the implementation of Innovation Partnership virtually impossible. A major argument in favour of this conclusion is the fact that generally operational programs are result-oriented. In this sense, setting targets, defining the activities to achieve them and their content, and receiving financial support are related to reaching positive results. In contrast, Innovation Partnership is based on research and development activities that regardless of their proper and lawful execution may not lead to the creation of innovation. Scientifically, this also

[21] Source: European Conference on e-Government, ECEG, 2010

represents reaching a result, but from the perspective of the operational program it will be treated as full non-performance and will result in loss of funding support. In general, operational programs require setting specific objectively measurable indicators of the implementation progress as a positive prerequisite for funding.

In this sense, Innovation Partnership is impracticable beyond programs, mainly focused on funding research and development activities[22]. However, these programs are targeted to specific beneficiaries (R&D organizations – universities and the Bulgarian Academy of Science) and therefore, cannot serve to fulfil the tasks, set for to a wider circle of contracting authorities.

The question of the possibility of obtaining financial support at EU level falls mainly within the scope of the Programme for Research and Innovation "Horizon 2020". Its financing mechanisms offer the possibility of obtaining support related to:

- Provision of financing to effective Innovation Partnerships, incl. activities related to coordination and networking;
- Provision of full funding in relation to the implementation of activities supporting coordination – preparation of future conduct of Innovation Partnership - identifying common challenges before contracting authorities; conduct of open market studies prior to the initiation of a specific Innovation Partnership.

7. EXAMPLES OF GOOD PRACTICES IN THE IMPLEMENTATION OF INNOVATION PARTNERSHIP

The review of publicly accessible information indicates that by the time of preparation of the present paper no examples of implemented Innovation Partnerships in their form introduced with the directives of 2014 could be found. This is understandable given the fact that the Innovation Partnership is a long-term process, involving a significant amount of work both within the preparational activities, and during the implementation itself.

However, several materials could be found, related to the implementation of the Pre-commercial Procurement and "public procurement for innovation" (the model prior to the introduction of Innovation Partnership as a separate type of procedure and a special type of public contract). Useful resource in this sense is the Procurement of Innovation Platform, where along with various methodological materials, policies, strategies and tools more than 40 examples of good practices on national and international context (incl. EU and beyond) are discussed. Useful for contracting authorities would be the Guidance for Contacting Authorities on Public Procurement of Innovation. While generally these examples affect projects that are implemented outside the new procedure, they can be viewed in the light of the directives of 2014.

In connection to the above, useful are also a number of documents of the European Commission, which examine the patterns for the realization of Pre-commercial Procurement and "public procurement of innovation" – Communication from the Commission "Pre-commercial procurement: Driving innovation to ensure sustainable high quality public

[22] See Operational Program "Research and Development" and the requirements for financial support of R&D projects by the “Scientific Studies” Fund.

services in Europe ", COM (2007) 799 and the notes thereto, and the "Guide for innovative solutions in public procurement" (Working document SEC (2007) 280).

[i] This Policy Paper was developed and written by Boyan Ivanov and Radina Tomanova on behalf of *Dimitrov, Petrov & Co* under the direction of Paulo Magina, Head of the OECD Public Procurement Unit and Petur Berg Matthiasson, Policy Research and Advice, OECD Public Procurement Unit with contribution from Zdravka Pekova, Local Coordinator for the OECD in Bulgaria for this project.