

Open Market Consultations

What is an OMC?

OMCs create a structured, yet non-binding dialogue between procurers and the market to present the innovation challenge, collect feedback on the technological feasibility and inform relevant stakeholders and the industry about a forthcoming PCP/PPI.

Through an OMC, procurers can determine the readiness and suitability of innovative solutions and assess the need for further R&D leading to a PCP or, alternatively, the readiness for deployment via PPI.

Why is it important?

- To make potentially interested bidders aware of the procurer's needs;
- To validate the innovation potential of the identified need/challenge. It confirms if there is a solution already available on the market (PPI) or if incremental innovation is still needed to bring the desired solutions to the market (PCP). This will provide the legal justification for the choice between PCP and PPI;
- To cross-check the assumptions made by the procurer in the design of the business case;
- To cross-check the feasibility and market acceptance of the envisaged contract set-up.

Legal aspects

Compliance with TFEU **principles of equal treatment, transparency, non-discrimination and proportionality** is a MUST.

- ➔ OMC activities should be **proportionate** to the procurement's scope and value.
- ➔ Pay special attention to the **principle of equal treatment**. OMCs could favor the companies involved in the OMC, subsequently distorting competition in the procurement procedure.
So: ensure that the participation of potential bidders in the OMC does not affect competition in any future tender procedure

How to do this:

- Ensure that all suppliers have the same chance to participate;
- Pro-actively communicate the needs, requirements and planned procurement set-up to all participants;
- Ensure that any information the potential bidders receive during the OMC is also shared with other potentially interested bidders;
- Ensure that legal protection of all participants' intellectual property rights and trade secrets or that they will be entitled to compensation in case of breach of confidentiality obligations by the procurer;
- Clearly state that the procurement procedure is conducted separately after the OMC and all potential bidders are treated equally.