



Improving Lithuania's Public Procurement System

COMPONENT 2 – MODERNISING THE PROCUREMENT OF INNOVATION AND RESEARCH AND DEVELOPMENT (R&D)



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1. Introduction

The Lithuanian government is currently implementing major public sector reforms. Among those reforms, public procurement is an important element to achieve sustainable and inclusive growth while ensuring the efficient utilisation of public funds. The OECD is currently working with the Lithuanian authorities with the support of the European Commission through the Structural Reform Support Service (SRSS) to improve the professionalization of the procurement workforce and to carry out an assessment of the existing schemes and mechanisms related to the public procurement of R&D services.

This report brings together the results of the OECD assessment of the current R&D system in place, with the purpose of mapping the different administrating schemes and its objectives, the target groups, the funding streams and the legal frameworks. The schemes/programmes identified by the Lithuanian authorities were:

- National R&D Programmes (former National Science Programmes)
- Scheme for Governmental procurement of R&D services
- Pre-commercial Procurement scheme
- Innovative Public Procurement scheme
- Ministerial Orders for R&D services and
- Urgent and “Required” Research and Technology Orders.

In analysing these schemes and mechanisms related to the public procurement of research and development (R&D) services the OECD has carried out extensive interviews with all the key stakeholders responsible for administration and funding of research activities, innovation and technology transfer. Ministry of the Economy and Innovation (MoEI)¹, Ministry of Education, Science and Sport (MoESS)², the Lithuanian Research Council (RC) which is actively involved in the programme and competitive based research financing and the Agency for Science, Innovation and Technology (MITA) which implements assigned programmes and measures encouraging innovation, R&D and active cooperation between business and science. In addition to meeting these stakeholders during fact-finding missions, a local legal consultant and public procurement expert supporting the project interacted with all the stakeholders separately as well, including Universities and other interested parties, gathering additional data and information about the current schemes.

Provisions of Directive 2014/24/EU and Directive 2014/25/EU, as well as provisions of Public Procurement Act (PPA) and of Law on Procurement Implemented by Contracting Entities Operating in the Water, Energy, Transport and Postal Services Sectors (PA) have been considered while assessing the possibilities to procure the R&D services in above mentioned programmes/schemes according to public procurement rules. In addition, possible exceptions where there is no obligation to purchase R&D services following public procurement rules have been considered as well.

Governments are increasingly recognising the immense power of public procurement to solve global societal challenges, improve productivity and boost innovation, while ensuring value for money. In 2017, the OECD published a report on Public Procurement and Innovation, which takes stock of the strategic use of public procurement to achieve innovation in 35 OECD Member countries and non-Member economies. The results from the survey show that almost 80% of responding countries support procurement for innovation, and 50% have developed an action plan for procurement for innovation, either as part of broader innovation or procurement strategies or as stand-alone initiatives. Countries use various measures to support procurement for innovation, mostly policy instruments, regulations or legal instruments. Others include comprehensive programmes, e.g. on smart procurement in general or on research and development (R&D), followed by financial instruments, such as finance dedicated to procurement for innovation.³

The following assessment does indicate that the institutional framework in Lithuania is quite similar to those of other OECD member countries. Furthermore, the assessment takes into consideration the framework laid out in the innovation report and the challenges that those countries are facing, such as how best to optimise the use of different tools, such as policy instrument and comprehensive programmes.

1.1. The R&D schemes and challenges

Prior to initiating this project, the main objective was essentially on identifying any potential opportunities to develop a simplified unified system for purchasing innovation in general. However, early on in the assessment process of these schemes and programmes additional issues were identified. First, relating to the concept of research and development (R&D). Second, relating to the purpose of some of the minor programmes. Third, relating to the procurement for innovation programmes and to what extent they are achieving their objectives. Fourth, to what extent can public procurement rules or methods be applied in allocating research funds?

What was clear from the outset was that there was some debate in the Lithuanian administration, mostly within the Ministry of the Economy and Innovation (MoEI) about some of the schemes and programmes managed by the Ministry of Education, Science and Sport (MoESS) and the Research Council (RC). The questions focused on the extent to which the programmes under the MoESS and RC are funding innovation and to what extent should public procurement principles or rules be applied to acquire innovation if that is the case.

Before making any further assessment, the titles of some schemes and programmes should be clarified. According to legal acts that set the rules for schemes and programmes implementation, the titles should be as follows:

- Scheme for Governmental procurement of R&D services, as *Long-term institutional R&D programmes*
- Ministerial Orders for R&D services as *Scheme for research and higher education institutions to purchase R&D services*
- Urgent and “Required” Research and Technology Orders as *Need-based R&D projects*.

Above-mentioned titles will be used in this report.

For the assessment an attempt was made to distinguish between what constitutes research and what development in the overall R&D concept, many times these two concepts are bundled together but they do have different meanings. The government of the Republic of Lithuania has approved a Description of recommendatory classification of different phases of research and development⁴ (hereinafter – Description). Description defines nine phases of R&D activities and innovation as a separate activity (see Table 1.1). In addition, MITA together with the Lithuanian Innovation Centre prepared Guidelines for Research and Development cost's record-keeping and documentation of Research and Development projects⁵, which also provides clarification on interpretation of different R&D phases. By analysing how Lithuanian Authorities define different phases of R&D it is clear that certain parts of the framework, i.e. development, is more in line with the process of innovating a product, service or a process. Assessing the schemes and programmes by using this framework helps provide a better picture of whether a scheme or programme is predominantly funding research, research and development, development or innovation.

Table 1.1. Phases of R&D

General scope	Phase number of R&D	Title of R&D phase
Fundamental research	1	Research for fundamental knowledge
Applied research	2	Development of the concept of utilisation of knowledge
	3	Proof/confirmation of the viability of the concept
	4	Development and testing of model, design of object of art
	5	Testing the model by simulating realistic conditions, presentation of the design of object of art to society
Development	6	Creation of prototype (testing series)
	7	Demonstration of prototype (testing series)
	8	Production of pilot batch (final testing of the version)
	9	Assessment of new product having been created (pilot examples of new product evaluated by users and (or) client)
Innovation	–	Commercialisation of the product, development of object of art

Source: Description of recommendatory classification of different phases of research and development approved by Resolution No 650 of Government of the Republic of Lithuania June 6th, 2012.

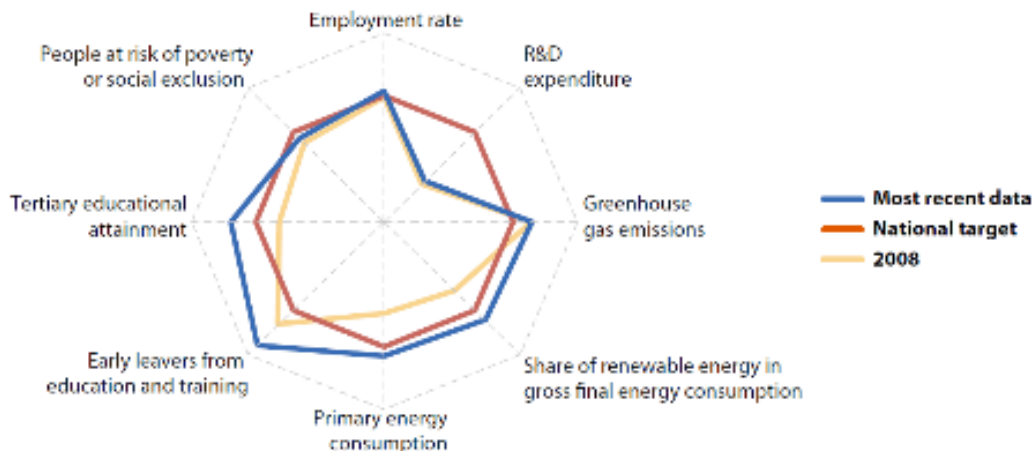
The analysis suggests that certain schemes are predominantly funding research even though the title or the purpose of the programme states that the funds are for both research and development according to their legislation or policy. Research and development expenditure (as % of GDP) in Lithuania was reported at 1.0425 % in 2015, according to the World Bank collection of development indicators, compiled from officially recognized sources, see figure 1.1.

Figure 1.1. Research and development expenditure of Lithuania (% of GDP)

Source:

<https://tradingeconomics.com/lithuania/research-and-development-expenditure-percent-of-gdp-wb-data.htm>.

In recent years the Lithuanian government has set ambitious targets to increase the level of funding for R&D, as part of the broader national targets, but without being successful in meeting those targets, see figure 1.2. Pre-commercial funding of procurement projects seems to be growing with 85-90% of the funds coming from the European Commission; however, it is unclear to what extent that funding is considered R&D expenditure according to the figure below.

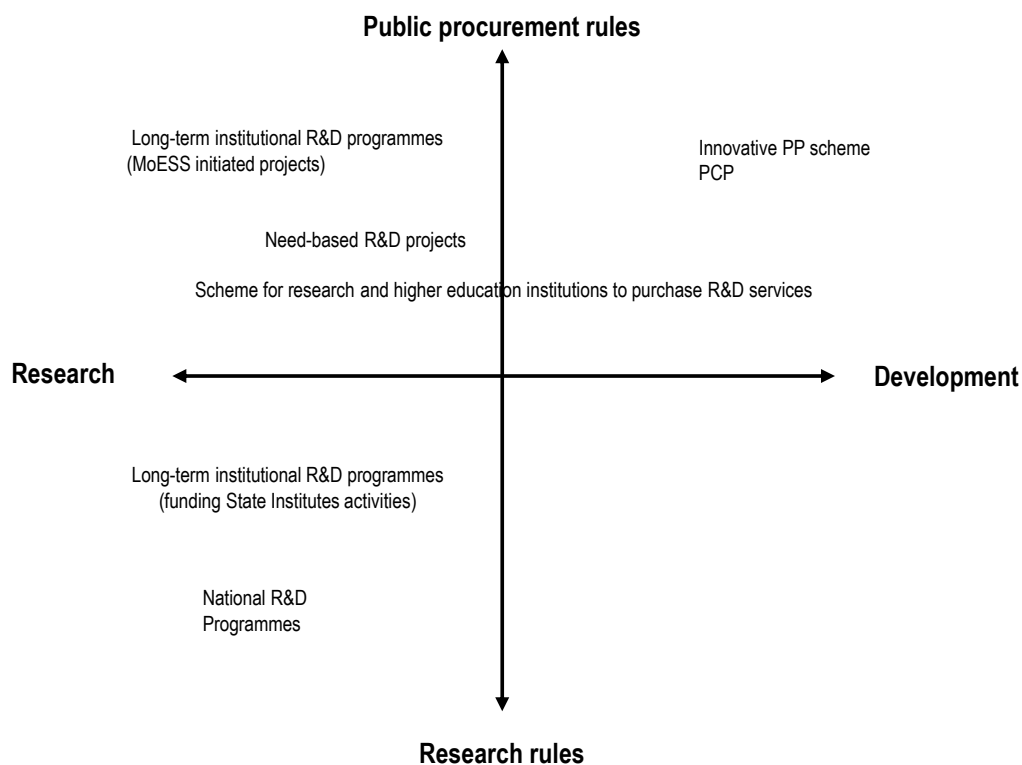
Figure 1.2. Lithuania, Change since 2008 in relation to national targets, 2016

Source: http://ec.europa.eu/eurostat/statistics-explained/index.php/Europe_2020_indicators_-_Lithuania.

The preliminary assessment of the schemes and programmes according to their R&D characteristics as seen in figure 1.3 does suggest that certain parts of the research programmes could apply public procurement methods even though the objective is clearly to fund research rather than development or innovation. The analysis does suggest that these programmes, often minor in scale, used more as *ad hoc* or needs based could be better suited as part of a so called “Innovative Public Procurement scheme” or Pre-

commercial Procurement scheme. However, the procedures of innovation partnerships or pre-commercial procurement might not be best suited for these smaller R&D programmes. Nevertheless, applying regular public procurement procedures with an inclusion of innovative criteria's in the technical specification could be applied.

Figure 1.3. The Purpose of the schemes and programmes analysed



Source: OECD, based on the information received

The purpose of some of the minor programmes is unclear. For example, the scheme discussed as Scheme for Research and Higher Education Institutions to purchase R&D services supports what can be considered regular public procurement, with a specific focus on science and study institutions which according to our assessment is being practiced in contradiction to the EC directives. The scheme Need-based R&D projects is not urgent as the projects are not short term but almost long term like many other larger researching funds. The procedures of this scheme could follow the public procurement legislation. Larger Long-term Institutional R&D programmes are generally meant to fund activities of State research institutes. However, they also provide for cases where MoESS starts projects when there is no State research institute that can solve the challenge identified by public authorities. These are smaller scale projects similar to the needs-based ones, which could follow the public procurement legislation.

Development and innovation phases are technically supported through PCP and innovation partnerships (one of the public procurement procedures). In addition, there is the so-called traditional procurement of innovation through conventional means incorporating a criteria specificity that does not yet exist or needs to be developed for the contracting authority (CA). There is a great challenge in Lithuania like in many other

European countries concerning the use of public procurement to acquire innovative solutions. The processes can be complicated, risky and costly leading many CAs to take the more traditional route and solution. The innovation partnership does not seem to be used as much as PCP, most likely because PCP provides co-funding while the CA fully funds the solutions developed under innovation partnership. The processes are in many phases similar and it is unlikely to see a rise in use of innovation partnerships while PCPs continue to be co-funded.

Funding of research does not necessarily exclude the possibility of applying traditional public procurement procedures. The process of advertising, assessing and selecting research funded programmes is similar to the process of selecting a supplier applying the traditional procurement procedures. However, issues were identified about the transparency of some of the selection procedures in addition to whether the needs based project should follow public procurement principles.

The next sections will provide further details about each of the schemes and programmes, with specific assessments and suggestions, as well as context and background for the proposals presented in the last part of this report.

1.2. Long-term institutional R&D programmes

The Long-Term institutional R&D programmes have been in place since 2012. The approval of the programme is in the hands of the Minister of Education, Science and Sport but it is implemented by the Research Council and its experts, which drafts the programmes (2011 and 2017) and evaluates the reports of the State research institutes receiving the funding every year. The regulation of the Long-Term institutional R&D programmes was approved by the Minister of Education and Science on 2011/01/31, order No V-153.

The objective of the scheme is to ensure coherent, planning and targeted R&D work, which has a long-term impact and which is solving the actual problems of the state and society. The implementation term of the programmes is no longer than 5 years. The Long-Term institutional R&D programmes are partially split into (1) funding of State research institutes according to activities established in their statutes and (2) funding of programmes of economic, social and cultural nature that require solution and which are initiated by MoESS. For both parts of this programme the Minister of Education, Science and Sport has to approve the programme topics. The funding of the State research institutes and the other programmes come both from the state budget and EU structural funds.

As mentioned above, this scheme consists of two parts:

Funding of state research institutes

Under this programme there are no specific target groups, but the funds go to 13 State research institutes as seen in table 1.2 below. Currently there are two long-term programmes: Long-term institutional R&D (social and cultural) programmes approved by the order No V-882 of the Minister of Education and Science of 7th August 2015, and Long-term institutional R&D programmes for 2017-2021 approved by order No V-273 of the Minister of Education and Science of 24th April 2015. Each State research institute has possibly one or more long-term programmes, in total they are 51. The State research institutes have certain autonomy in terms of deciding projects, and implementing long-

term programmes, which are prepared according to the State research institute activities, established in their statutes.

Table 1.2. Funding of state research institutes 2016-2018

in euros

Programme implementing institution	Posts (for the programme)	2016	2017	2018
The Law Institute of Lithuania	13.32	127 126.08	127 126.08	127 126.08
Nature Research Centre	101.61	0.00	980 300.00	1 029 600.00
Lithuanian institute of agrarian economics	14.44	0.00	141 465 160.00	141 465 160.00
Lithuanian Research Centre for Agriculture and Forestry	81.66	0.00	1 202 770.00	1 198 470.00
Lithuanian Energy Institute	80.93	0.00	1 016 280.00	1 142 140.00
Lithuanian Institute of History	44.74	0.00	436 480.00	436 480.00
Institute of Lithuanian Language	35.28	0.00	338 300.00	338 300.00
Lithuanian Culture Research Institute	26.23	0.00	260 100.00	254 110.00
The Institute of Lithuanian Literature and Folklore	32.22	0.00	309 000.00	309 000.00
Lithuanian Social Research Centre	16.65	0.00	159 700.00	159 700.00
National Cancer Institute	18.62	0.00	251 400.00	251 400.00
State Research Institute Center for Physical Sciences and Technology	232	0.00	4 450 000.00	4 450 000.00
State Research Institute Centre for Innovative Medicine	27.69	0.00	1 098 000.00	1 098 000.00

Source: Table is created based on the information provided in Long-term institutional R&D (social and cultural) programmes approved by the order No V-882 of the Minister of Education and Science of 7th August 2015, and Long-term institutional R&D programmes for 2017-2021 approved by the order No V-273 of the Minister of Education and Science of 24th April 2017.

Funding of programmes initiated by MoESS

The Ministry of Education, Science and Sport (MoESS) tends to initiate other programmes when there is no State research institute that can solve a particular problem. The programme by MoESS is initiated when a particularly sensitive economic, social or cultural problem for the state and society is identified. Then the process follows the following procedures: MoESS submits the challenge to the Research Council that announces a contest for programme's ideas, proposals are received from study or science institutions with other study and science institutions and/or a company, which has a research unit. A programme is implemented by the institution having submitted the best idea for the programme. The main problem that was identified is that the legal framework of this scheme does not contain any provisions as to how the proposals shall be assessed or how the best idea is chosen. Currently there are no needs based programmes being implemented.

The institutes are essentially not developing new products, services or processes. They are predominantly funding research where the results are recommendations⁶, research publications etc. Our assessment suggests that these programmes do not directly support innovation projects. The long-term R&D institutional programme is meant to fund State research institutes for carrying out research. The part of this programme that is for *ad hoc* projects, aimed at solving state and society problems could be placed in another programme legislation and could be merged with the Need-based R&D projects scheme. If that would happen then it could also possibly abide by the public procurement legislation, using design contest procedure set out in chapter 4, section 1 of Public Procurement Act or in chapter 4, section 1 of Law on Procurement Implemented by

Contracting Entities operating in the Water, Energy, Transport and Postal Services Sectors. This will also correspond to provisions set in Title III, chapter II of Directive 2014/24/EU and accordingly to provisions set in Title III, chapter II of Directive 2014/25/EU.

1.3. National R&D Programmes

The National R&D Programmes (former National Science Programmes) have been in place since 2010 and are situated within the Research Council of Lithuania. The approval of programme is in the hands of the Ministry of Education, Science and Sport (MoESS). The Regulations of the National Science Programmes were approved by Resolution No. 731 of the Government of the Republic of Lithuania on July 16th 2008 (hereinafter – Regulations). The Description of the procedure for the preparation and implementation of National Science Programmes was approved by Resolution No. VIII-39 of Research Council of Lithuania on April 16th, 2015.

There are few issues with the aforementioned legislation. Regulations were approved implementing provisions stipulated in Article 77 of Law on Science and Studies (LSS), which came into force on May 12th, 2009. Article 77 (3) of LSS determined the concept of national science programmes, i.e. competitive science programme enabling to solve actual state and society problems and to increase international competitiveness of science of Lithuania. The version of Article 77 of LSS was in force before December 31, 2016. From January 1st, 2017, Article 77 of LSS was no longer relevant to national science programmes. From that date, new version of Article 84 of LSS came into force. Above-mentioned Article 84 (3) of LSS determined the concept of national research and development programmes, i.e. competitive research and development programme enabling to solve actual state and society problems and to increase international competitiveness of science of Lithuania. In other words, the regulation for the national science programmes were expanded and they should have been become national research and development programmes. In addition, Article 84 (3) of LSS required the Government to approve Regulations of the National Research and Development Programmes, but this legal act was never adopted. Neither regulations were changed. The regulations define the main activities and they are:

- research
- support and development of research infrastructure
- the dissemination of research results
- preparation of scientific advice for state institutions
- participation of executors, experts, members of programme implementation team in European Research Area networking.

On June 30th, 2018 a new Law on Technologies and Innovation (TI) No. XIII-1414 was approved. This new law came into force on 1st January 2019. Accordingly, the Law on Science and Study was also changed and came into force on 1st January 2019. With the changes, Lithuania is taking a new step in organising the implementation of National science programmes, which from the 1st of January 2019 became National Science and Technology programmes. Main policy making institution will be the MoESS for the science and the MoEI for the technology part. The two institutions will together be responsible for the preparation and approval of Regulations of the National Science and Technology Programmes. Government will no longer be in charge for preparation and

approval of this legislation. Yet, it will be a great challenge for MoESS and MoEI to create a unified, clear and transparent legislation for the implementation of National Science and Technology programmes, including procedures of contest, evaluation of proposals, etc.

The objectives of the National Science Programmes (NSP) are: 1) to concentrate the Lithuanian scientific potential and financial resources; 2) to initiate new scientific research (and concentrate the existing one), which is necessary to solve the problems identified in the National Science Programmes; 3) to receive state of the art scientific knowledge in order to solve these problems, implement the projects related to the development of state and society spheres, in articulation with various institutions. Each programme is a sum of research, methodologies and measures all tailored to a specific theme, providing most optimal conditions for a country to solve strategically important problems.

National science programmes are implemented through competitive science funding. According to General rules for competitive funding of science and dissemination projects, approved by Order No V-45 of Chairman of Research Council on January 29, 2018, proposals are submitted by study and science institutions, scientists, other natural and legal persons together with Lithuanian research organisation as a host institution⁷. If applicable, partner institutions from Lithuania or abroad are included. The host institution must be a Lithuanian research and education institution included in the *Register of Education and Research institutions*. In addition to that the project leader must be a scientist. In some call for proposals from partner institutions abroad must be included. Description of national science programmes, approved by Resolution No. VIII-39 of Research Council on April 16th, 2015, provides the provisions of preparation, implementation and administration of national science programmes. Description provides references to other legislation such as 1) General rules for appointment and activities of Research Council experts, approved by Resolution No VIII-21 of Research Council on May 26th, 2014; 2) Description of expert appraisal of science projects and its reports, approved by Resolution No. VII-115 of Research Council on October 1st, 2012⁸.

As mentioned before, in accordance to General rules for competitive funding of science and dissemination projects, approved by Order No V-45 of Chairman of Research Council on January 29, 2018,⁹ the host institution must be a Lithuanian research and education institution included in the *Register of Education and Research institutions* or other Lithuanian institution mentioned in LSS. This poses serious conformity issues with the EU legislation, in particular with the principle of non-discrimination on grounds of nationality set in Article 18 of the Treaty on the Functioning of the European Union. Such legislation could be justified only if it is based on objective considerations independent of the nationality of the persons concerned and proportionate to the legitimate aim of the national provisions.¹⁰ It should be noted that objective considerations can be justified on grounds of public policy, public security or public health. It also could be regulated by Regulation or Directive. Therefore, Lithuanian authorities should analyse the existence of objective considerations and if there are none, such legislation should be repealed to ensure a broader participation and respect for the EU legislation.

There are two steps of evaluation of proposals: administrative check and expert valuation. According to point 6 of Description of expert appraisal of projects and its reports, approved by Order No V-43 of Chairman of Research Council on January 29, 2018, proposals are assessed following expert appraisal forms approved by Chairman of Research Council. For example, Chapter III of Expert appraisal form of science project

proposal, approved by Order No V-151 of Chairman of Research Council on June 19th, 2017, includes such criteria for assessment of proposal as originality and relevance of the idea, reasonableness of the risk management, scientific competence of project manager, etc. Maximum score that proposal could get is 25. It is not clear what is or can be considered as “original”, “relevant”, “reasonable”, what scientific competence is enough to implement the project, etc. Such criteria do not ensure transparent and equal evaluation of the proposals. In addition to that, there is no appeal procedure. Chapter IV of General rules for competitive funding of science and dissemination projects, approved by Order No V-45 of Chairman of Research Council on January 29, 2018, provides provisions for appeal procedures and processing of appeals. Point 39 of above-mentioned General rules instructs that applicants can appeal only if there are any factual mistakes or any procedural discrepancies in administrative checks or expert valuations. Point 40 instructs that applicants have no right to appeal if they do not agree with a scoring or expert interpretation of proposal. The Research Council is a public institution and according to the Law on Public Administration, applicants should have the possibility to appeal all the decisions that the Research Council takes.

The funding of the National R&D Programmes is through state budget (located for RC and ministries or other state institutions) and through EU funds, international financial instruments and other legal funds. On average approximately 5 million Euros are allocated annually by the fund. The implementation term of the projects tends to be between 3-7 years. Funding for the five main funding programmes is listed in table 3. There are several projects under each programme heading; currently there are 21 ongoing projects under the *Modernity in Lithuania* programme. There are 14 ongoing projects under the *Towards future technologies* programme, one is concluded. The *Welfare Society* programme has 11 ongoing projects, 12 have been concluded and 2 projects were terminated before implementation term. *Sustainability of the agro-, forest and water ecosystems* has 11 ongoing projects, none have finished yet and the *Healthy ageing* programme has 27 ongoing programmes, with three projects that are concluded. Most of the recipients of funds under the National Science Programme are universities and research institutes.

Table 1.3. Funding of National R&D Programmes for 2015-2019

in euros

	2015	2016	2017	2018	2019
Modernity in Lithuania			689 850.00	729 917.00	716 758.00
Towards future technologies	0.00	1 141 273.50	1 468 888.24	1 454 117.90	
Welfare society	293 768.65	697 966.93	701 536.75	579 525.00	
Sustainability of the agro-, forest and water ecosystems	708 895.00	978 999.00	996 013.00	852 418.00	
Healthy ageing	653 277.95	1 431 763.06	1 688 671.63	1 427 543.00	

Source: <https://spektras.lmt.lt/>.

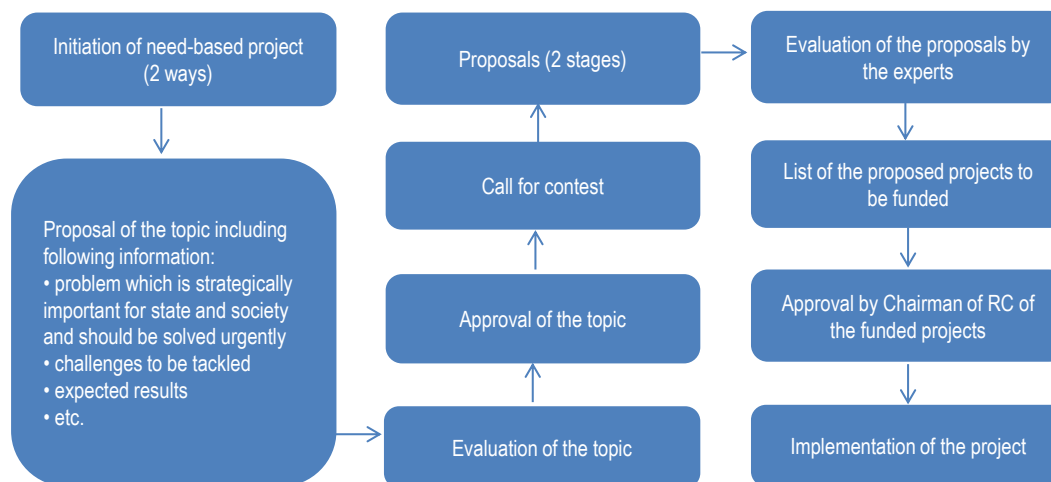
The previous section addressed the different R&D phases. One of the main objectives of this assessment is to establish to what extent research and innovation programmes are supporting research (R) and supporting development (D). By comparing the programmes work in table 1.3 to the definition of innovation and the framework of the Lithuanian authorities, it is clear that the programmes are predominantly funding research, not development as they are not developing products, services or processes. The programmes

are predominantly funding research where the results are recommendations, research publications, etc. In addition to that, the level of transparency in the evaluation of proposals should be improved, such as the selection process, the level of competence required by the researchers and the need for an opportunity to appeal the scoring and expert interpretation of the proposals. Lithuanian authorities should also analyse if their legislation is in accordance to EU legislation and if not, repeal those provisions.

1.4. Need-based R&D projects

The Need-based R&D projects have been operating since 2015 and are located within the RC. Description of the initiation and implementation procedures of need-based projects were enacted by a Chairman of RC order No V-150 (June 1st, 2016). This scheme aims to provide financing for short-term state-need based R&D projects. Need-based projects are implemented under themes submitted by the President of the Republic of Lithuania, Parliament of the Republic of Lithuania, Government of the Republic of Lithuania and different ministries of the Republic of Lithuania (hereinafter – Interested institutions) and are intended to yield tools (methodologies, recommendations, scenarios, models, networks, etc.) for science-based political decisions. It should be mentioned that themes for need-based projects can be submitted in two ways: (1) after RC publishes the call for themes or (2) interested institutions approach RC with themes for need-based projects.

After the approval of the themes for need-based projects, the Research Council prepares the documents for a competition among researchers and publishes a call for contest. Proposals are submitted by a researching team together with a Lithuanian education and studies institution as a host institution. This host institution must be a Lithuanian education and studies institution included in the *Register of Education and Research institutions* or other Lithuanian institution mentioned in LSS. As it was mentioned before (in the part for National R&D Programmes) such provisions pose serious conformity issues with EU legislation, unless it could be justified based on objective considerations independent of the nationality of the persons concerned and proportionate to the legitimate aim of the national provisions. If applicable, partner institutions from Lithuania or abroad are included. The project leader must be a scientist. To implement a Need-based project scheme certain steps need to be followed, see Figure 1.4.

Figure 1.4. Main steps of Need-based projects scheme

Source: Based on information provided by the Lithuanian authorities.

This programme is rather small in terms of funding with a budget of about 400 000 Euros per year. Table 1.4 below includes the total funding of need-based research per year and the total number of projects funded. The call for themes of research is in line with other research programmes.

Table 1.4. Funding and number of need based research 2015-2018

	in euros			
	2015	2016	2017	2018
Funding of Urgent and "Required" Research and Technology Orders	139 061.06	461 388.83	256 271.52	316 823.00
Number of projects funded	9	15	6	7

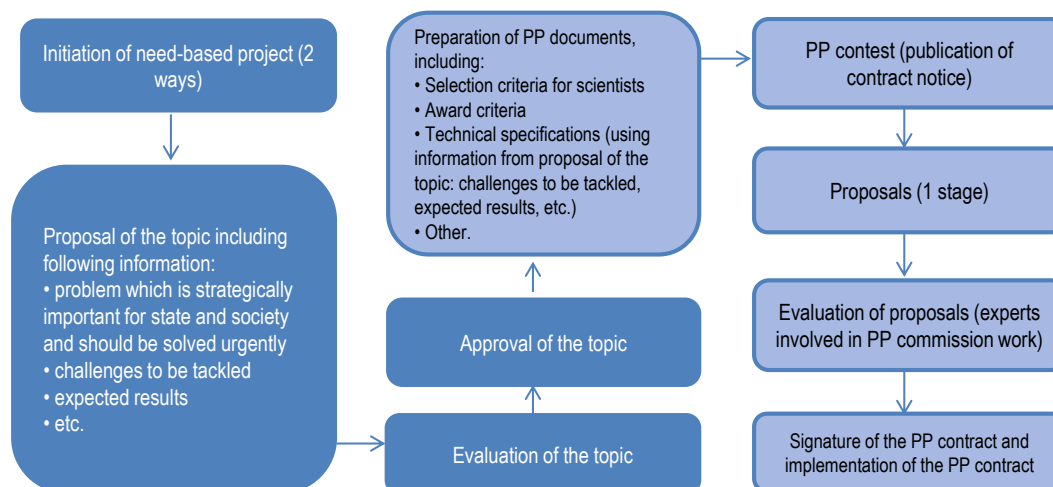
Source: <https://spektras.lmt.lt/>

The implementation term of the project itself, according to legislation can be more than 2 years. In addition, there are other procedures which are time consuming (see figure 1.4). The processes for need-based projects are almost as long as the long term or national science programmes. As mentioned, interested institutions can propose the topics, and since all are contracting authorities that could be done following the public procurement legislation. The preparation of the contest documents and evaluation of proposals in this scheme is similar to that of the National R&D programmes. Confronting similar challenges such as improved transparency. For example, in the call for contest documents do not specify what qualification is needed to get maximum score to win the contest. In addition to that, to appeal any decision taken by the RC, same rules stipulated in Chapter IV of General rules for competitive funding of science and dissemination projects, approved by Order No V-45 of Chairman of Research Council on January 29, 2018, are applied. Such appeal procedures do not ensure transparent and equal evaluation of the proposals.

This programme as such does not support the implementation of new products, services or process implementation. However, the nature of the programme itself indicates that

procurement rules could be applied, with technical specification providing the benchmark for assessing the results of the contest (see figure 1.5).

Figure 1.5. Possible steps of need-based projects scheme



Source: OECD adaption of the Needs-based project scheme.

1.5. Scheme for research and higher education institutions to purchase R&D services

Scheme for research and higher education institutions to purchase R&D services is not a scheme *per se*. For the moment, this scheme is applied under the exception stipulated in Article 15 (2) (1) of Public Procurement Act (PPA) and in Article 26 (2) (1) of Law on Procurement Implemented by Contracting Entities Operating in the Water, Energy, Transport and Postal Services Sectors (PA). In accordance to Article 15 (2) of PPA and Article 26 (2) of PA the scheme was approved by the Minister of Education and Science on 2018/05/09, order No V-448. It has to be mentioned that PPA and PA came into force on 1st July 2017 while the scheme under the above-mentioned articles of PPA and PA was approved on May 9th, 2018. The funding for this scheme comes from the state budget but can also come from EU funds and international finance instruments as well.

Article 14 of Directive 2014/24/EU and article 32 of Directive 2014/25/EU indicates that those Directives shall only apply to public service contracts for research and development services which are covered by CPV codes 73000000-2 to 73120000-9, 73300000-5, 73420000-2 and 73430000-5, provided that both of the following conditions are fulfilled: (a) the benefits accrue exclusively to the contracting authority (or to the contracting entity) for its use in the conduct of its own affairs, and (b) the service provided is wholly remunerated by the contracting authority (or by the contracting entity). Those provisions are transposed into Lithuanian law with article 15 (1) of PPA and respectively into article 26 (1) of PA. In other words, when any contracting authority (or contracting entity) does not fulfil the conditions in the above-mentioned Articles of PPA and PA, they can buy research and development services without applying PPA or PA provisions. In this case article 15 (2) (1), article 15 (2) (2) (which will be discussed below) of PPA and article 26 (2) (1), article 26 (2) (2) (which will be discussed below) of PA contain the provisions that regulate the applicable rules for those procurements.

Article 15 (2) (1) of PPA and respectively article 26 (2) (1) of PA stipulates the following: public service contracts for research and development services which are covered by CPV codes <...> and for which this law is not applicable according to (1) part of this article and which are aimed to benefit the science and study institution's needs. Therefore, this scheme is used not only by contracting authorities but exclusively by science and study institutions. However, article 15 (2) (1) of PPA and article 26 (2) (1) of PA, should never be applied, because when science and study institutions (which are contracting authorities or contracting entities) buy research and development services for their needs, they will not fulfill the conditions stated in (1) (1) of Article 15 of PPA or conditions stated in (1) (1) of Article 26 of PA. It is fair to say that article 15 (2) (1) of PPA and respectively of article 26 (2) (1) of PA is contradictory to article 15 (1) (1) of PPA and respectively to article 26 (1) (1) of PA.

The conflicting issue concerns the science and study institutions, which are also contracting authorities (or contracting entities), and when they buy for their needs, they have to apply PPA or PA rules. Moreover, EC Directives does not exclude specific contracting authorities (or contracting entities) which could apply the exception.

1.6. Pre-commercial Procurement Scheme (PCP)

The Pre-commercial Procurement (PCP) scheme is applied under the exception provided for in article 15 (2) (2) of Public Procurement Act (PPA) and in article 26 (2) (2) of Law on Procurement Implemented by Contracting Entities Operating in the Water, Energy, Transport and Postal Services Sectors (PA). The Description of the Pre-commercial Procurement Implementation Procedure was approved by the Government of the Republic of Lithuania on 2015/07/01, Resolution No 709. It established the principles of organisation and implementation of the pre-commercial procurement, main rights and duties of the subjects participating in pre-commercial procurement and other essential issues related to pre-commercial procurement. The Ministry of Economy is responsible for the public procurement policy and the Agency for Science, Innovation and Technology (hereinafter – MITA) is the coordinating organisation which is entrusted with the administration of pre-commercial procurement by the Government of the Republic of Lithuania. The funding for this scheme comes from the state budget, municipalities' budget, EU funds and other legal funds. This scheme is co-funded from funds allocated to MITA, which is currently suspended due to the significant funds that have already been allocated for this scheme with over 80% of the funds coming from the European Commission, see table 5. It is funded through Measure No. LVPA-01.2.1-V-835 "Project of Pre-commercial procurement LT". The measure was approved by Order No. 4-238 of the Minister of Economy of the Republic of Lithuania on 18th of April 2017. The Lithuanian Business Support Agency is responsible for the administration (implementation) of the measure, as it decides whether EU funds shall be allocated for the projects or not.

Table 1.5. Funds for the Pre-Commercial Scheme from different stakeholders

in euros

	EU	Private funds	Total
Funds for Measure "PCP LT" No. 01.2.1-LVPA-V-835	29 360 732.00	5 181 300.00	34 542 032.00

Source: www.esinvesticijos.lt.

The target group of the scheme is all 4 000 contracting authorities in the country. The approval of process of this project is in the hands of MITA. The public contracting authorities may apply for EU funding only if they have received the approval that the procurement of innovative product can be organised under the Description of the Pre-commercial Procurement Implementation Procedure from MITA. The maximum funding for 1 project is EUR 2 000 000.00. The EU Structural Funds co-funds up to 90 percent of total eligible project costs (the remaining 10% should be covered by the contracting authority itself). Twelve projects have received funding in 2018, see table 1.6.

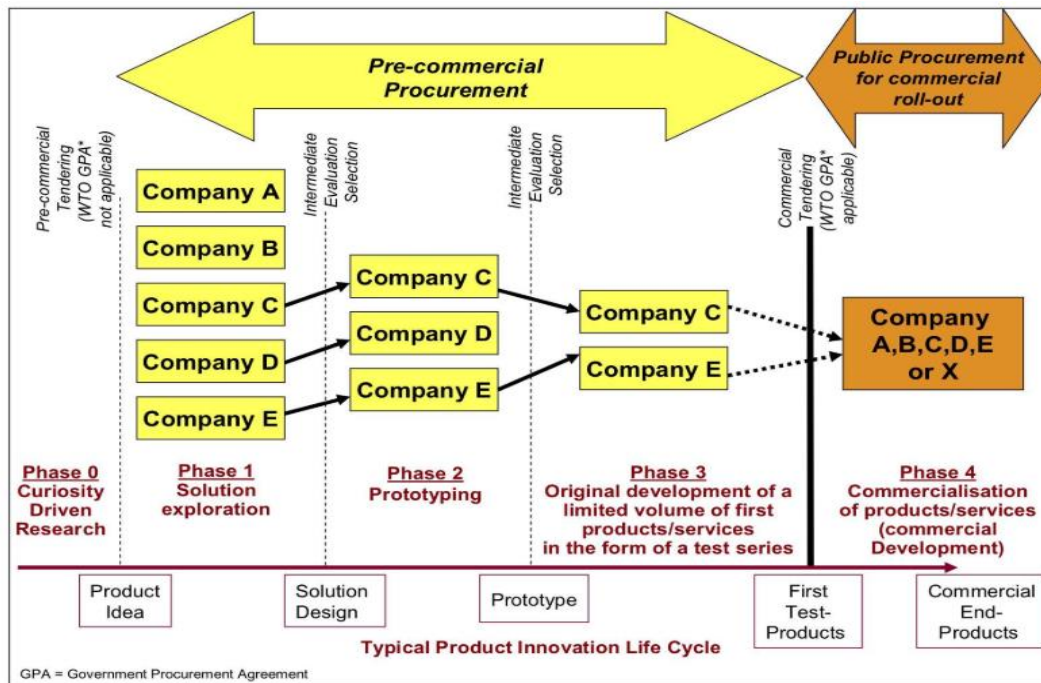
Table 1.6. Projects funded under the first Call of the Pre-Commercial Procurement Measure in 2018

Signature of the contract	Beneficiary	Project status	Requested funds, (EUR)
2018-05-21	Public liability company "ESO"	Implementation	525 252.00
2018-05-21	Public liability company "ESO"	Implementation	116 529.50
2018-05-16	Lithuanian Road Administration under the Ministry of Transport and Communications	Implementation	477 666.68
2018-05-16	State institution Centre of Registers	Implementation	990 000.00
2018-07-03	Vilnius University Hospital Santaros Klinikos	Implementation	337 741.44
2018-08-01	Vilnius University Hospital Santaros Klinikos	Implementation	876 579,24
2018-05-22	Kaunas City Municipal Administration	Implementation	795 000.00
2018-05-24	Lithuanian Sea Museum	Implementation	887 842.24
2018-04-10	Bank of Lithuania	Implementation	896 300.00
2018-05-22	Kaunas City Municipal Administration	Implementation	999 800.00
2018-08-23	Vilnius City Municipal Administration	Implementation	682 000.00
2018-07-26	Druskininkai Municipal Administration	Implementation	782 000.00

Source: www.esinvesticijos.lt.

The aim of the scheme is to develop new products to stimulate demand-oriented innovations and to speed up the development of such innovations, which should effectively tackle the needs of the public sector, see the different phases of the PCP scheme in figure 1.6.

Figure 1.6. The different phase of the Pre-commercial Procurement scheme



Source: Annex — SEC(2007) 1668 — to Communication: ‘Pre-commercial Procurement — Staff Working Document’.

The uptake of PCP in Lithuania is likely to have been higher with a stronger message coming from the Government. The new Law on Technologies and Innovation (TI) No. XIII-1414 that came into force on January 1st, 2019 could be the support that contracting authorities have been waiting for. The purpose of this legislation is to facilitate the creation and implementation of innovation in Lithuania. It provides for important tools to increase the number of PCP and innovative procurement. *First*, additional funding will be provided for contracting authorities that make PCP and innovative procurement. *Second*, the state will fund economic entities that require new products for effective implementation of state functions. This change could have a significant impact in terms of increasing the number of innovative public procurement taking place in Lithuania. However, programmes that are heavily reliant on EC funding tend to entail a greater amount of bureaucracy; hence, ways need to be identified to both simplify and accelerate those processes.

1.7. Innovative Public Procurement Scheme

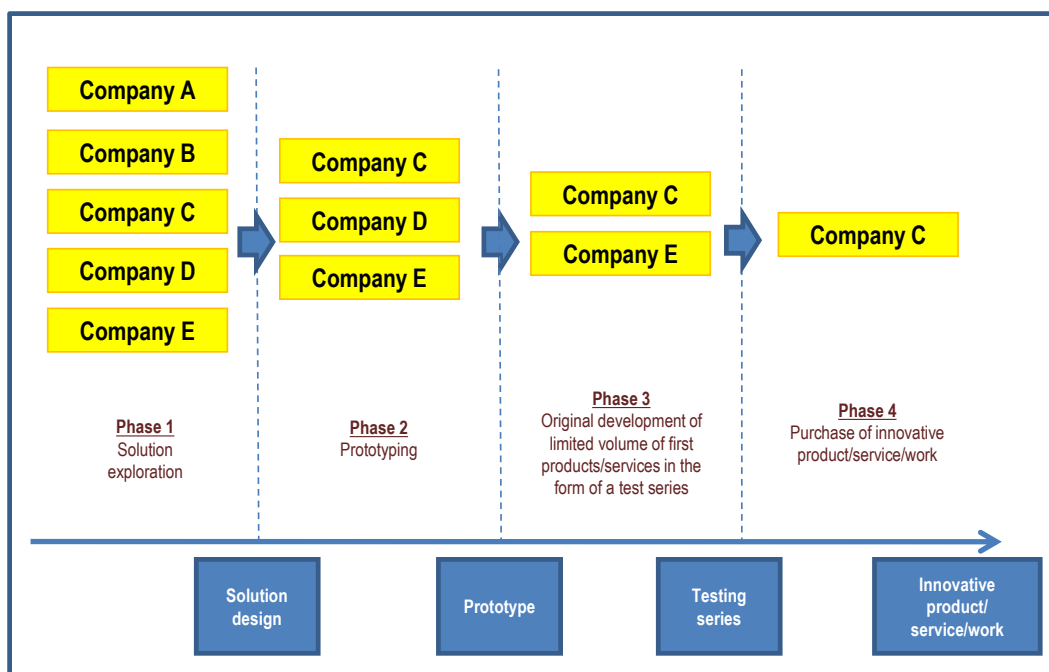
The Innovative Public Procurement scheme is not a scheme *per se*. In fact, the assessment of the so-called “Innovative Public Procurement Scheme” identified two working streams:

Innovation partnership

Innovation partnership is one of the procedures provided for in article 31 of Directive 2014/24/EU and article 49 of Directive 2014/25/EU and respectively transposed to articles 73-75 of PPA and articles 81-83 of PA. This type of procedure is new as PPA and

PA transposing EU Directives provisions took effect on 1st July 2017. As discussed previously innovation partnership phases are similar to pre-commercial procurements, see figure 1.7.

Figure 1.7. Innovation Partnership Phases (PPA articles 73-75, PA articles 81-83)



Source: OECD, based on provisions of PPA/PA.

Innovation procurement

Developing measures to stimulate demand for innovation, helping to address social, economic and environmental challenges, is one of the objectives of the Lithuanian Innovation Development Program 2014-2020. In order to achieve this objective, the Ministry of the Economy and Innovation (MoEI) published guidelines on innovative public procurement approved by Order No. 4-938 of the Minister of Economy of the Republic of Lithuania of December 29th 2014. These guidelines are of recommendatory nature; they describe how public procurers can buy goods, services or works of better quality, more adapted to their needs, services or goods that could enhance performance of public procurers and increase demand for innovation in the market. As innovation procurement is any regular public procurement made by contracting authority, the funding for innovation procurement comes from the state budget, EU funds or other international financial instruments.

The expected result criterion is how much of total public procurement in Lithuania is made up of innovative public procurement. In table 1.7 the volume (number, value) of innovative procurement from 2011 can be determined in accordance with procurement (annual) reports according to the data published by the contracting authorities in the Central Procurement Information System.

Table 1.7. Procurement of innovations as part of the total public procurement in Lithuania (2011-2016)

Period	Innovative procurements	All procurements	Innovative procurements	All procurements
	No. of procurements		Expenditure, Mil. EUR	
2011	17	642 866	0.15	571.50
2012	13	746 895	46.5	4 116.30
2013	12	702 904	0.8	4 340.30
2014	17	746 494	4.4	4 931.90
2015	15	764 929	1.1	3 844.90
2016	14	809 538	1.8	4 920.30

Source:

http://vpt.lrv.lt/uploads/vpt/documents/files/Inovatyv%C5%ABs%20vie%C5%A1ieji%20pirkimai%202011-2017_II_ketv.pdf

The data indicates that the number of procurement of innovation is rather low, both in number of procedures and as proportion of the total volume. There seems to have been a sharp rise in 2012 but after that, the funding of innovation procurement has been around the 1 million Euro mark.

The difference between an innovation partnership and regular procurement of innovation can be found in the involvement of several economic operators at an early stage of the partnership. This might not be the case for innovation procurement. However, both streams require that the product is fully paid by a contracting authority and that the innovative product is bought from one of the economic operators, which from the start participated in all or few phases of innovative product creation. There is very limited information available on the number of innovation partnership, according to the CVPP website¹¹, no innovation partnership is registered while the number of innovation procurement is more than 100 procedures since 2011.

One of the possible measures to increase the number of innovative procurement in accordance with the new legislation came into force this year, is that Government could determine the number (in absolute or in percentage terms) of public procurement that is to be carried out as innovative public procurement. This could be directed towards the ministries, government agencies, institutions under the ministries and other government-dependent contracting authorities.

Both innovative procurement methods are facing the same challenges, i.e. lack of promotion of the activity, limited training in the field leading to lack of competence to carry out these procedures. There have been significant efforts made by the Lithuanian authorities to put in place processes for procurement of innovation, such as the PCP and innovation partnership in addition to the more traditional method of procurement innovation, which still seems to be more popular but requires less interaction with the economic operators. The traditional process involves less co-creation than the other two processes.

Notes

¹ Up to 31th December, 2018, title was Ministry of Economy

² Up to 31th December, 2018, title was Ministry of Economy and Science

³ <http://www.oecd.org/gov/public-procurement-for-innovation-9789264265820-en.htm>

⁴ Description of recommendatory classification of different phases of research and development approved by Resolution No 650 of Government of the Republic of Lithuania June 6th, 2012.

⁵ <https://mita.lrv.lt/uploads/mita/documents/files/projektai/inospurtas/leidiniai/rekomendacijos.pdf>

⁶ *For example:* Recommendations for different things are described as expected results stipulated in point 7 of Long-term institutional R&D programme “Biota resources in varying environment: population, research on state of species and communities, the rational of management and sustainable use (BIOTA)”, implemented by Nature Research Centre.

⁷ Subject to the respective indication in the call for applications Lithuanian academy of sciences, national library, state library and county library, office of the chief archivist, national museum or state museum, healthcare institution that are mentioned in the LSS can also be the host institution. All of them are Lithuanian institutions.

⁸ The issue is that first legal act was repealed by Order No V-42 of Chairman of Research Council on January 29, 2018, and the second one - by Resolution No VIII-6 of Research Council on April 3rd, 2017. Instead of General rules for appointment and activities of experts, General rules of Research Council experts and their activities were approved by Order No V-42 of Chairman of Research Council on January 29, 2018. Instead of Description of expert appraisal of science projects and its reports, Description of expert appraisal of projects and its reports was approved by Order No V-43 of Chairman of Research Council on January 29, 2018. Despite all the changes, Description of preparation and implementation of national science programmes, approved by Resolution No. VIII-39 of Research Council on April 16th, 2015 was never changed and still provides the references to legislation, which is no longer in force.

⁹ See points 2.17 and 3 of General rules for competitive funding of science and dissemination projects, approved by Order No V-45 of Chairman of Research Council on January 29, 2018.

¹⁰ See ECJ Case C-322/13, paragraph 23; *Bickel and Franz* (Case C-274/96), paragraph 27

¹¹ <https://cvpp.eviesiejipirkimai.lt/>

2. Proposals

In addition to the mapping, several proposals are put forward in this report to ensure public procurement rules are being applied where they should be applied and to ensure that a more effective and efficient system supporting R&D is put in place in Lithuania. The scope of this report does not resolve the issue of to what extent Lithuanian funds are funding research (R) and development (D). There is a certain misconception about the latter concept, not only in Lithuania but also in other EC countries, where funding is more often channelled into research rather than development.

As explained above, the assessment of the different programmes and schemes has led to the following proposals:

- The legislation on different schemes and programmes should be improved and supplemented with clear provisions (i.e. eligible expenditure, administrating institution, etc.) related to the funding of development and innovation phases.

Long-term institutional R&D programmes

- As the Long-Term institutional R&D programmes are meant to fund State research institutes, the part of the programme that is funding *ad hoc* small projects (programmes) initiated by MoESS, should be considered for withdrawal from the legal framework of this programme. The *ad hoc* small projects could be merged with the scheme of Need-based R&D projects and/or possibly apply traditional public procurement methods, using design contest procedure under chapter 4, section 1 of Public Procurement Act or chapter 4, section 1 of Law on Procurement Implemented by Contracting authorities Operating in the Water, Energy, Transport and Postal Services Sectors.

National R&D programmes

- Responsible Lithuanian authorities should take more time and attention to prepare and approve related legislation.
- The assessment does suggest that it is not practical to apply public procurement rules for national R&D programmes. Nevertheless, the practice used in public procurement to set selection criteria, award criteria (qualitative and/or quantitative) and technical specification requirements could be used in preparing contest documents to implement national R&D programmes. Also to define the criteria for the level of competence required by the researchers. Furthermore, the practice used to set requirements in the Descriptions for implementation of programming period 2014-2020¹ could be used as well.
- As the provisions (related to discrimination on grounds of nationality) of General rules for competitive funding of science and dissemination projects, approved by Order No V-45 of Chairman of Research Council on January 29, 2018, poses serious conformity issues with the EU legislation, Lithuanian authorities should analyse the existence of objective considerations and if there are none, such

legislation should be repealed to ensure a broader participation and respect for the EU legislation.

- As the new Law on Technology and Innovation came into force on January 1st 2019, MoESS and MoEI should work together to create a unified, clear and transparent legislation for implementation of National Science and Technology programmes, including procedures of contest, evaluation of proposals (including qualitative and/or quantitative evaluation criteria), appeal procedure (including possibility to appeal the scoring and experts interpretation of proposals), etc.

Need-based R&D projects

- The repeal of the scheme of Need-based R&D projects should be considered. The research services which are currently funded under this scheme can be purchased using traditional public procurement procedures by interested institutions (which are contracting authorities). Otherwise, the legislation should be improved by introducing transparent and clear provisions and criterions for the evaluation of proposals. Introducing an appeal procedure to appeal the scoring and experts interpretation of proposals should be considered as well.

Scheme for research and higher education institutions to purchase R&D services

- The Scheme for research and higher education institutions to purchase R&D services is currently applied under exception provided for in article 15 (2) (1) of Public Procurement Act (PPA) and in article 26 (2) (1) of Law on Procurement Implemented by Contracting authorities Operating in the Water, Energy, Transport and Postal Services Sectors (PA) and approved by the order No. V-448 of the Minister of Education and Science of 9th may 2018. Authorities should consider revoking the legislation, respectively eliminating the aforementioned articles in the PPA and PA.

PCP, Innovative Public Procurement scheme

- PCP, innovation partnership and other innovative procurements should be promoted by developing a national strategy for the promotion of Innovation procurement including trainings regularly organised by authorities in charge.

Note

¹ For example: Description approved by Order No V-197 of Minister of Education and Science on March 27, 2017.

Improving Lithuania's Public Procurement System

COMPONENT 2 – MODERNISING THE PROCUREMENT OF INNOVATION AND RESEARCH AND DEVELOPMENT (R&D)

For more information visit:

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