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General Secretariat

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WORKING DOCUMENT

From:	Commission services
To:	Working Party on Competitiveness and Growth (Public Procurement)
Subject:	Public Procurement Act : Impact Assessment - Presentation at the Working Party on Competitiveness and Growth (Public Procurement) on 17 September 2026

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Public Procurement Act Impact Assessment

Presentation to the Council Working Party on Public Procurement

GROW.D2

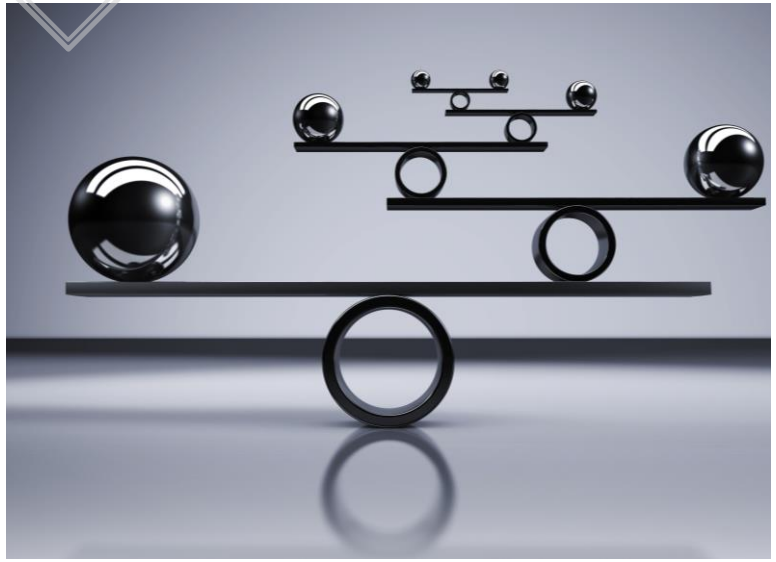
17 September 2026

European Commission

Agenda

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- Presentation of the Impact Assessment on Public Procurement Act
  - Problems
  - Options
  - Impacts
- Discussion / Q&A



Main sources of evidence

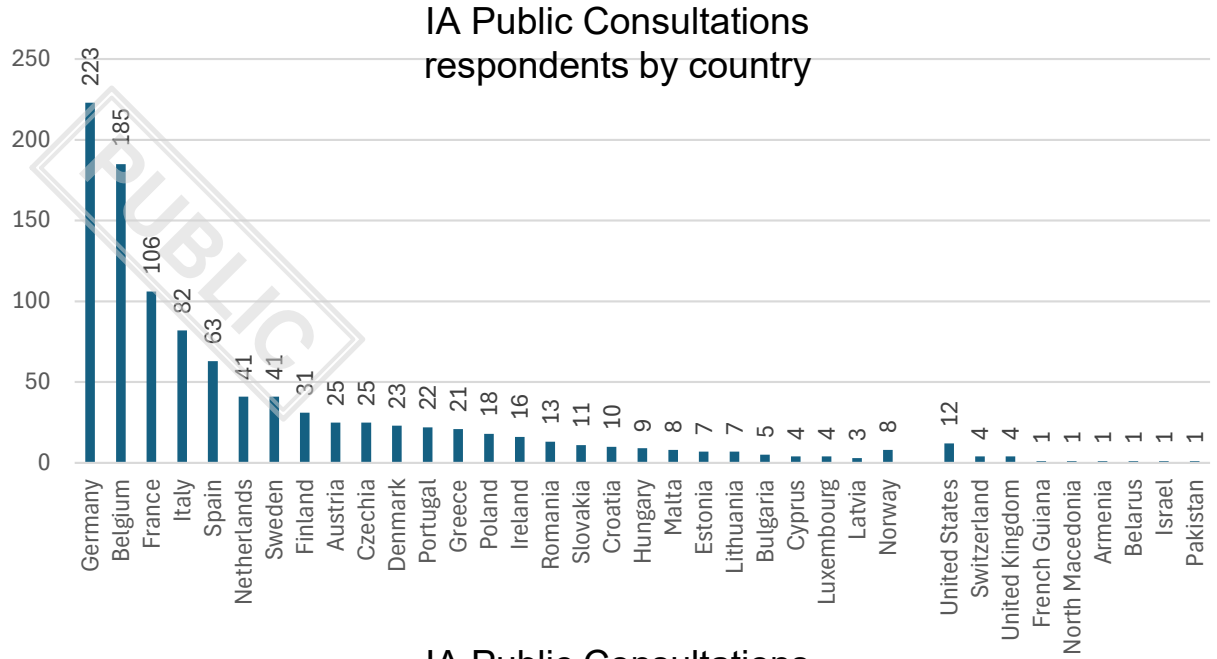
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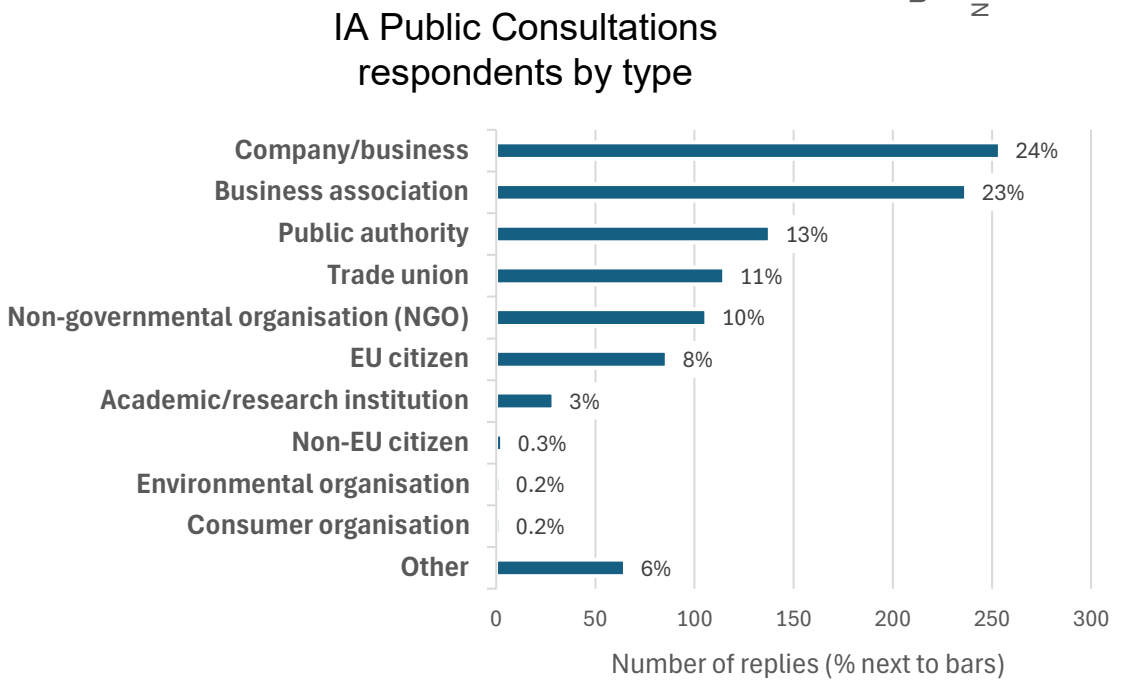
- Evaluation and supporting study by Ecorys (2025)
- Public consultations on the evaluation and impact assessment
- Call for evidence for evaluation and impact assessment
- Additional studies supporting the evaluation and the impact assessment
- Additional targeted consultations, surveys conducted as part of the studies, expert group meetings, hearings, as well as dedicated SME surveys
- TED database and in-house data analysis
- JRC macroeconomic model “Fidelio”

Consultations

in numbers

- Evaluation
  - Call for evidence – 949 replies
  - Public consultations - 733 replies
- Impact assessment
  - Call for evidence – 745 replies
  - Public consultations – 1037 replies
  - SMEs consultations – 108 replies
- Selected other consultations:
  - Social Partner Hearing – 62 participants
  - Meeting with 13 NGOs working on environment and social responsibility
  - Meeting with SME Envoys Network

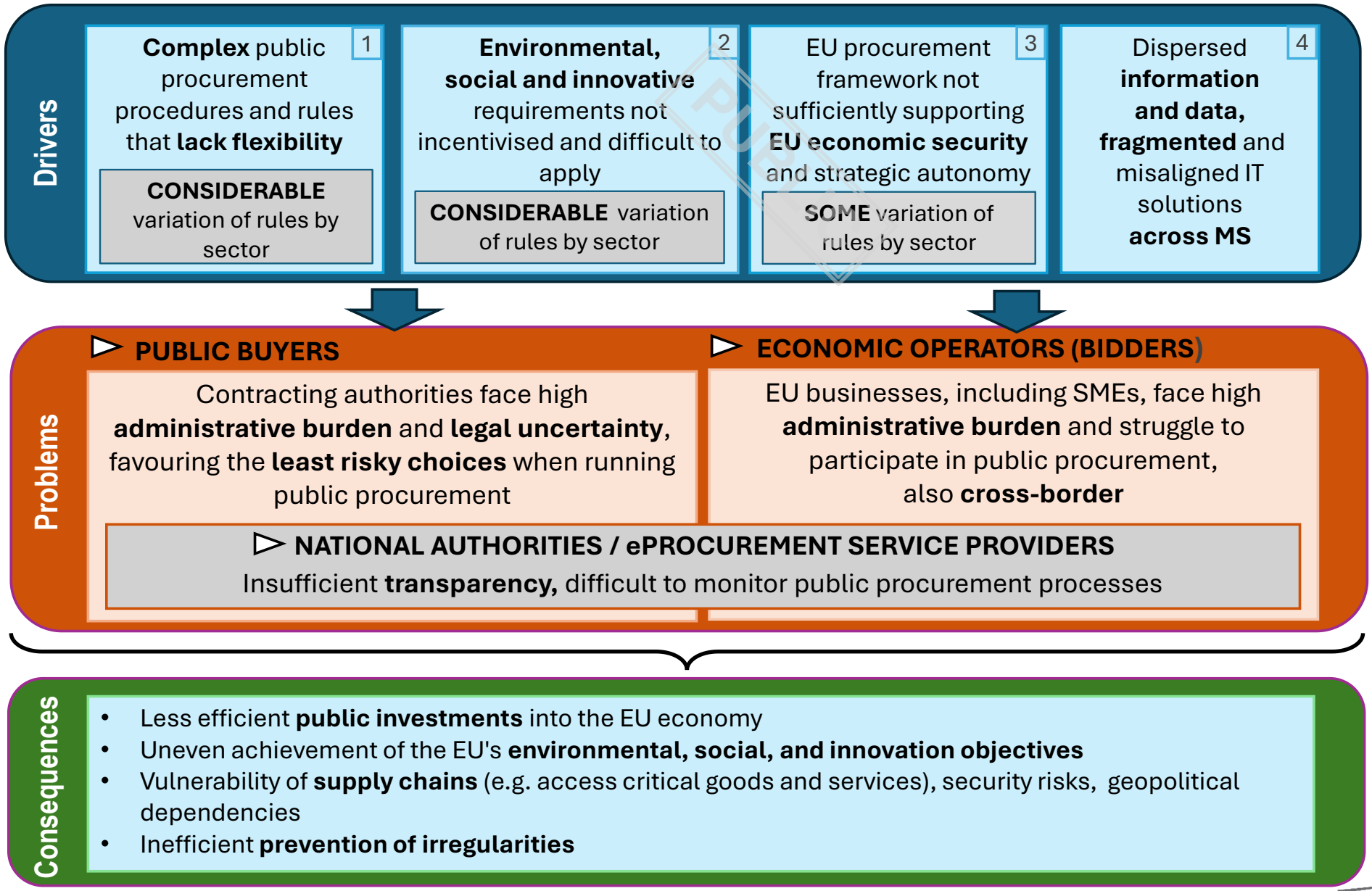




Legend: IA – impact assessment; NGOs – non-governmental organisations

IA, Annexes 2 and 9

Problems and consequences



IA: chapter 2, p.11

Driver 1: Complex procedures / lack of flexibility

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- Administrative costs of public procurement estimated at 0.9% of contract value
  - And up to 1.9% for contracts below €300,000 (World Bank)
  - Average cost of €6,000 for public buyers and €11,400 for economic operators, with an overall procedure cost of €43,200 with 3.3 bidders
- Legal uncertainty about concepts and definitions (e.g. opt-outs, concessions, or contract modifications)
- Buyers favour the least risky choices, even when these are not optimal (e.g. lowest price, not using negotiations)
- Crisis response procurement is not flexible enough
- 40 different eForms
- Procurement rules scattered across sector-specific legislation
- Complexity increases with national gold-plating

Driver 2: ESI* not incentivised / difficult to apply

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- 37% of procedures awarded on the basis of price only
  (22% of procedures include green criteria, 25% social, and 8% innovation)

GREEN

- Different green provisions included in various EU sectoral legislative acts
- Many definitions of what constitutes “green” across Member States
- Ecolabels difficult to use: only 200 tenders referred to ecolabels in 2022-2025



SOCIAL

- Different social provisions included in various EU sectoral legislative acts
- Linking working conditions to the subject matter difficult (81 judgments in Spain alone in 2018-2025)
- Subcontracting difficult to monitor in relation to social conditions, including where the entire contract is subcontracted



INNOVATION

- The innovation partnership was only used in 218 cases in 2016-2024
- Uncertainty about how to conduct market consultations
- Transfers of intellectual property rights to public buyers discourage bidders



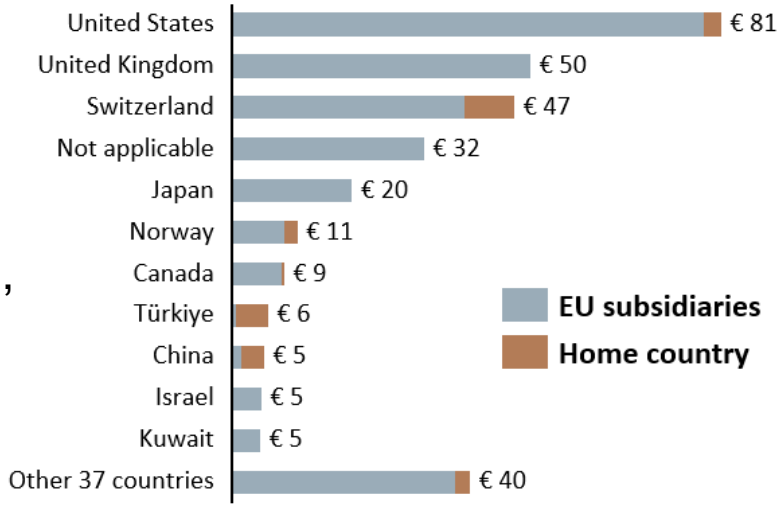
*ESI – Environmental, Social, Innovative

Driver 3: No sufficient support of EU economic security & strategic autonomy

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- Around 7.5% of awarded contract value goes to non-EU firms (based on ownership)
  - Among the top 10 countries not covered by trade agreements, CN 1.7%, TR 1.9%, KW 1.5%
  - Nevertheless, third-countries are important in some sectors, e.g. CN in electric modules, TR in construction
- Possibilities to exclude third-country bidders from countries without a covered trade agreement rarely used
  - Case law alone doesn't provide sufficient legal certainty
  - Buyers lack the capacity and/or access to information on the specific scope and coverage of trade agreements (e.g. Access2Markets tool is not widely used and is not legally binding)
- No horizontally applicable rules / provisions on EU preference

Figure. Non-EU-owned economic operators, awarded value, years 2018-2023, EU 27 [billion euro]



Source: World Bank 2025

Legend: CN – China; TR – Türkiye; KW – Kuwait.



Driver 4: Data and IT fragmentation

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- 800,000 new notices are published in TED every year
- The quality of the data collected in TED shows several shortcomings (e.g. incomplete entries, inconsistent use of classifications and fields)
- 123 eProcurement systems operate across the EU
- No once-only principle in public procurement
- Member States use different data structures and focus monitoring mostly on pre-award phases (no life-cycle monitoring)
- This increases costs, affects cross-border procurement, and hinders the monitoring of public expenditure, which is critical to ensuring fair competition and preventing irregular practices

Objectives

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General

Make public procurement a more efficient public investment instrument, supporting policy objectives, in particular single market integration, strategic economic autonomy, social and ecological sustainability and innovation

Specific

1. **Simplify** and promote **flexibility** in procurement procedures and increase **legal clarity** and **coherence** of applicable rules, so as to facilitate public procurement processes and access to them for economic operators across the single market, including for SMEs

2. Increase the uptake of **environmental, social and innovation public procurement** in support of strategic policy objectives of the Union and provide a more coherent legal framework in this regard

3. Improve EU **economic security and strategic autonomy** in public procurement, promoting a coherent legal framework in this regard

4. Facilitate access to **public procurement information, data and IT solutions** so as to reduce administrative burden and increase transparency and monitoring, thereby preventing and reducing irregular practices and enabling policy-making choices

IA: chapter 4, p.20

Policy Options – Construction logic

PUBLIC

Specific objective	1. Simplify and promote flexibility in procurement procedures and increase legal clarity and coherence of applicable rules (FLX)	2. Increase the uptake of environmental, social and innovation public procurement and provide a more coherent legal framework (ESI)	3. Improve EU economic security and strategic autonomy in public procurement, promoting a coherent legal framework (BEU)	4. Facilitate access to public procurement information, data and IT tools (MPL)
Policy options	FLX.0	ESI.0	BEU.0	MPL.0
	FLX.1: Targeted improvements on simplification, procedural flexibility and coherence	ESI.1: Inducing green, social and innovation procurement	BEU.1: Voluntary European preference	MPL.1: Decentralised eProcurement platforms to establish an interconnected digital marketplace
	FLX.2: Simplified & flexible procedures in a more coherent system	ESI.2: Improving coherence and horizontal integration in public procurement	BEU.2: A framework for coherent European preference in selected sectors	MPL.2: Centralised EU marketplace replacing MS marketplaces
		ESI.3: Mandating green, social and innovation procurement	BEU.3: Mandatory European preference across all sectors	

IA: chapter 5, p.21

Flexibility and simplification (FLX)

options description

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FLX.1 Targeted improvements

- Negotiations in the Classical Directive, as in the Utilities Directive
- Material corrections during procurement procedures allowed, for example in cases of errors
- Guidance on how to conduct preliminary market consultations
- Clearer rules for crisis procurement, including security concerns
- Clarifications on concessions (e.g. definitions and the notion of operating risk)
- Cross-references to all exclusion grounds in sectoral acts

FLX.2 Systematic approach

- The three directives merged into one act
  - The same procedures and horizontal rules
- Three main procedures: open with optional negotiations, dynamic, and innovation
- Clear rules on emergencies
- Increased transparency and fraud prevention
  - (use of digital fraud detection tools such as ARACHNE+, equal disclosure of all clarifications to bidders, and justification of direct awards in a public summary of results, as well as of information gathered during market consultations)
- “How to buy” provisions integrated into the public procurement act where legally possible
- Otherwise, as in FLX.1, in particular negotiations

FLX - Impacts

FLX Administrative cost change under 10 percentage points increase in use of negotiations scenario (present value annualised)

	CA	EO	Total
EU wide cost change (€ million)**	78	- 166	- 88

The table presents the annualised present value (PV) over seven years of application at a 3% discount rate.
**takes into account that there are on average 3.3 bids from EO per procedure. Source: In-house analysis. See Annex 8.*

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Common FLX impacts

- Negotiations and corrections
  - Reduction in early termination due to material errors*
  - 70% support in consultations
- Simplification can lead to an increase in the number of bidders (80% of OPC responses); more competition can lead to price reductions
- Greater transparency to support fraud prevention
- Reduction in administrative burden (simpler procedural requirements)
- Removal of uncertainty around rules for crisis procurement
- Concessions: could reduce excessive *ex ante* financial requirements for economic operators and enhance project resilience

Additional impacts FLX.1

- Increased awareness of exclusion grounds in sectoral acts

Additional impacts FLX.2

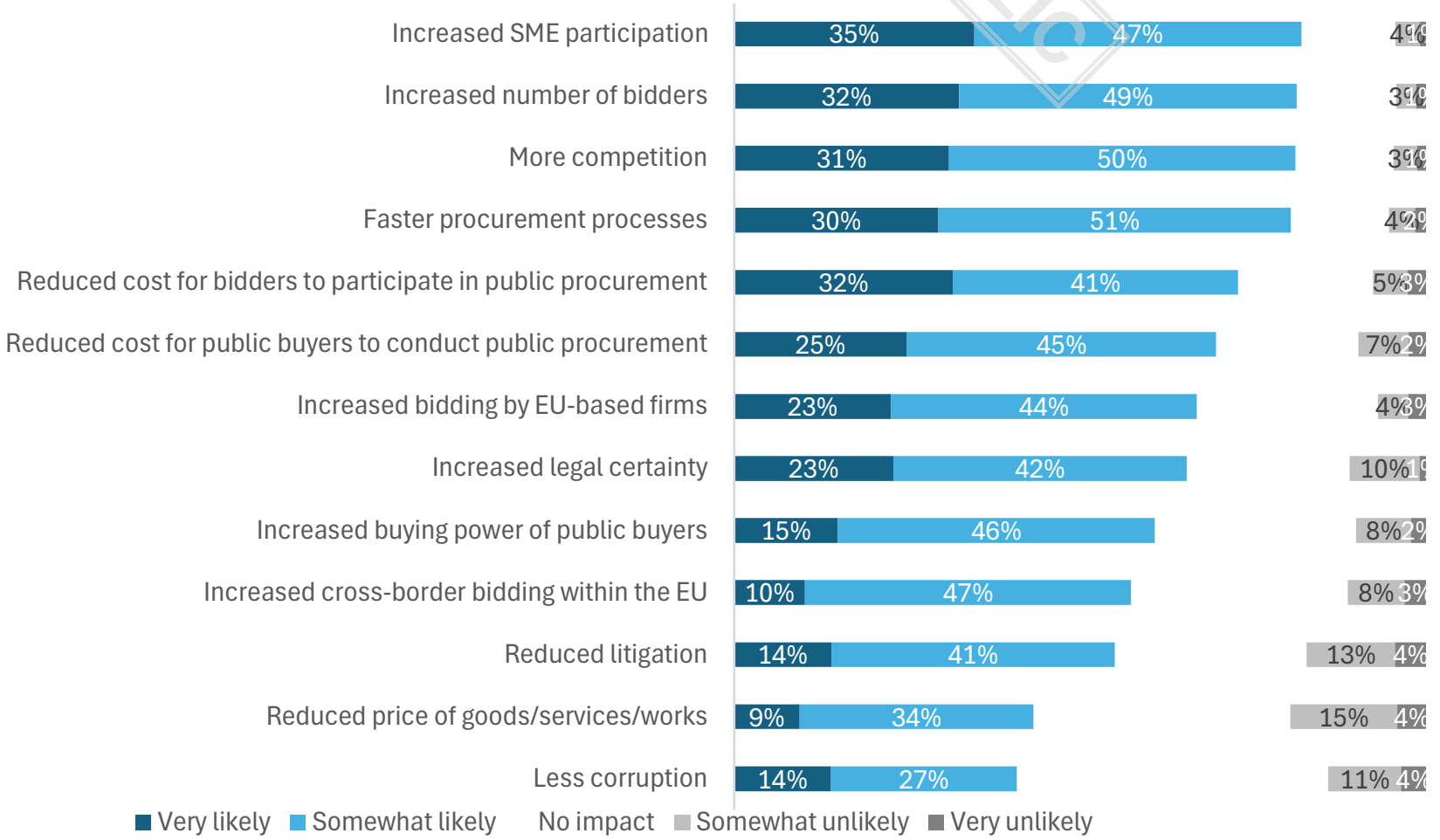
- One act would reduce complexity, simplify procedures, and avoid inconsistencies
- Extends the use of ESI to concessions
- One “how to buy” framework, with integrated exclusion grounds from sectoral acts, would eliminate inconsistencies and overlaps

* DK study suggests that more than 25% of all contracts is cancelled due to the inability to proceed with lawful modifications.

Legend: CA – contracting authorities; EO – economic operators; OPC – open public consultations

FLX impacts – Consultation results

Question: Please assess the likelihood of impacts of the proposed simplification measures; all replies.



IA, Annex 9, p.280

Note: Single-choice responses only; results reflect replies from those who answered.
Source: Public Consultations on public procurement reform. Commission own analysis.

Environment-Social-Innovation (ESI)

options description

PUBLIC

ESI.1 Inducing ESI

- Best Price-Quality Ratio (BPQR) on a comply-or-explain basis, with a minimum 30% weighting for quality (50% in the case of labour-intensive contracts)
- Definitions of ESI
- Incentivised use of the EU Ecolabel
- Ban on subcontracting the entire contract
- Working conditions may be linked to the subject matter
- Innovation procedure based on challenges, with IPR remaining with bidders unless otherwise justified

ESI.2 = ESI.1 + coherence

- ESI.1, plus “how to buy” and horizontal “what to buy” provisions on green and social aspects moved to the PPA

ESI.3 Mandatory ESI

- BPQR without an opt-out
- The bidder’s overall social and environmental policies may be taken into account (i.e. loosening the subject matter requirement)
- Targets for ESI, with reporting
- Mandatory EU Ecolabel
- Ban on subcontracting beyond the second tier
- Sector specific “what to buy” provisions on green / social aspects moved to the PPA
- Otherwise, as in ESI.2

Legend: PPA – public procurement act

ESI - Impacts

ESI.1 and 2 Administrative cost change under 18.5 percentage points increase in use of BPQR (present value annualised)

	CA	EO	Total
EU wide cost change (€ million)			
BPQR comply or explain	55	457	512
Voluntary EU Ecolabel		12**	12
Total	55	469	524

Note: Presented figures are rounded, though totals are calculated using precise values, which may result in minor discrepancies; The table presents the annualised present value (PV) over seven years of application at a 3% discount rate.

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Common ESI impacts

- Positive impact on the achievement of overall policy objectives (sustainability, social inclusion, innovation)
- Quality -> price impacts are moderate (USA/Canada study: median price 1% higher); Norway: no unusual spending inflation following the expansion of quality-based procurement
- Benefits when taking into account the product life cycle (e.g. savings on maintenance, repair, and replacement)
- BPQR and competition – studies suggest a change in competition, which can be mitigated by clear award criteria and digital procedures; the use of BPQR in award criteria does not exclude bidders, as may be the case with technical specifications
- Irregularities – effects depend on the capacity of authorities; green and social criteria generally not used to favour particular bidders; the link to the subject matter, the obligation to comply with the principles of proportionality, non-discrimination, and transparency, as well as the obligation to clearly define and disclose quality in advance, are safeguards against irregularities

Additional impacts ESI.1

- The voluntary approach was favoured in consultations

Additional impacts ESI.2

- Coherent, clear provisions on strategic procurement in the main set of rules

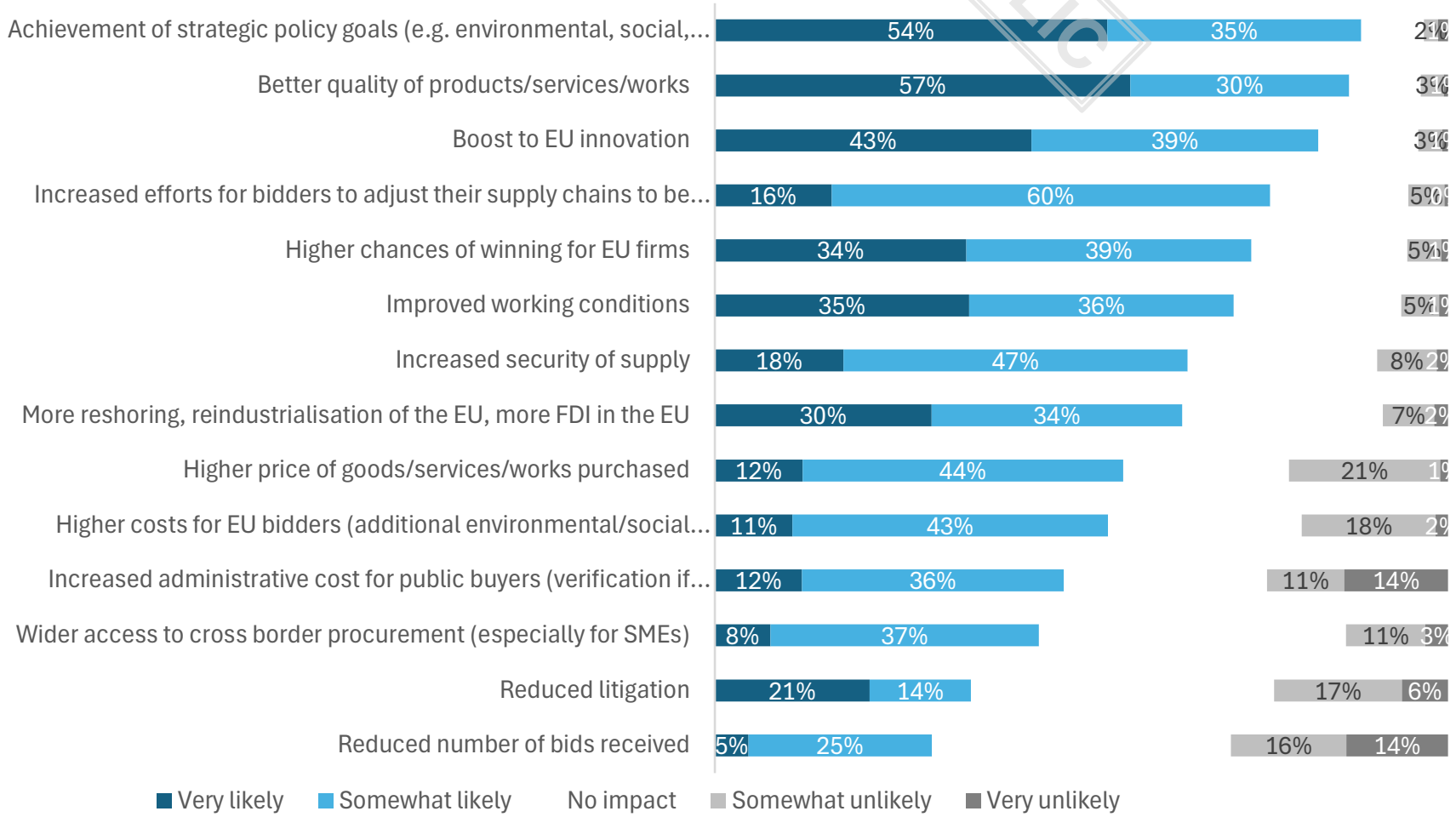
Additional impacts ESI.3

- Scores highest for green and social provisions; however, it was less favoured in consultations and can be suboptimal in some cases (e.g. BPQR for standard goods)

Legend: CA – contracting authorities; EO – economic operators; BPQR - Best Price-Quality Ratio

BPQR impacts – Consultation results

Question: How likely do you believe the following outcomes would occur if the future general legislative framework incentivised BPQR?; all replies.



IA, Annex 9, p.331

Note: Single-choice responses only; results reflect replies from those who answered.
Source: Public Consultations on public procurement reform. Commission own analysis.

Legend: BPQR - Best Price-Quality Ratio

European preference (BEU)

options description

PUBLIC

BEU.1 Voluntary European preference

- Codification of CJEU case law, providing in EU law the possibility to exclude bidders from countries not covered by trade agreements
- Cross-references to sectoral provisions
- Guidance on implementation

BEU.2 Coherent framework

- BEU.1 plus a framework and toolbox of mechanisms for European preference clauses in future sectoral acts and delegated acts (possibility to exclude bidders or products)
- Common definitions, documentation requirements, and criteria to determine the origin of an economic operator or a product
- Requirement to use the Access2Markets tool to determine which countries are covered by the relevant international agreements
- The Union Customs Code becomes the main reference point for determining the origin of a product and its key components
- Horizontal provisions on cybersecurity and resilience integrated in PPA

BEU.3 Mandatory European preference

- Mandatory general (across all sectors) exclusion of bidders from countries not covered by trade agreements

Legend: PPA – public procurement act

BEU - Impacts

BEU.2 Administrative cost change under 10% of procurement subject to European preference (present value annualised).

	CA	EO	Total
EU wide cost change (€ million)	7.4	7.4	15

Presented figures are rounded, though totals are calculated using precise values, which may result in minor discrepancies; The table presents the annualised present value (PV) over seven years of application at a 3% discount rate.

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Common BEU impacts

- Protected segments of the economy enjoy higher profits, while segments that use protected inputs face higher costs
- Trade balance: reduction in imports of the goods or inputs covered by the measure
- Reduced EU exposure to future foreign supply disruptions and input price shocks

Additional impacts BEU.1

- Divergent interpretation by buyers could create uncertainty for bidders

Additional impacts BEU.2

- Harmonised framework for sector-specific acts, with its common horizontal elements and menu of EU preference mechanisms, would ensure coherence, strengthen legal clarity, reduce interpretative discretion, and limit the risk of divergent and disproportionate application
- Precise impact would depend on the sectors covered by future legislation

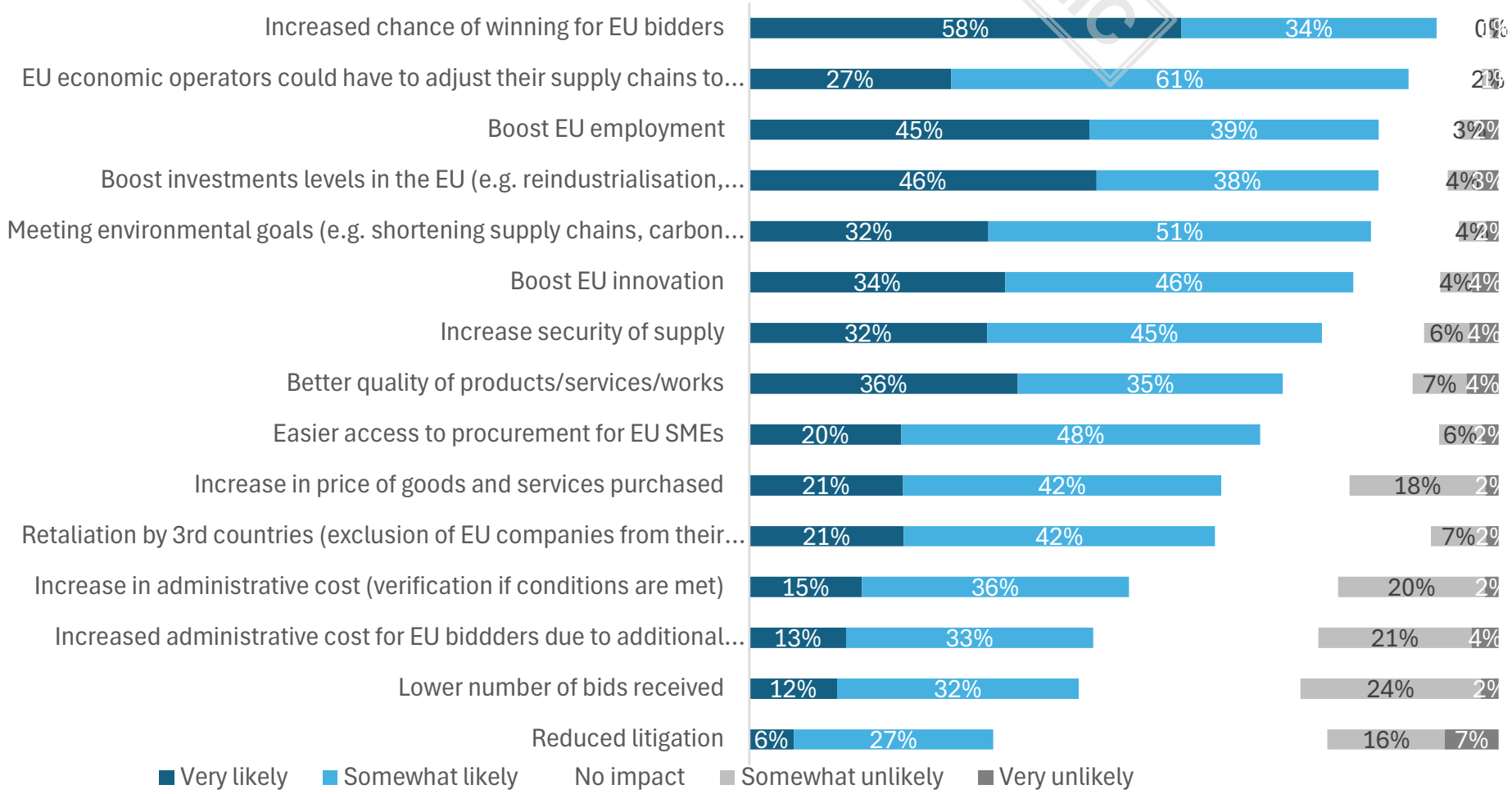
Additional impacts BEU.3

- Would impose compliance and verification requirements even in sectors where local sourcing is not feasible or justified, or where the number of bidders from non-covered countries is negligible
- Would narrow the supplier base across all Member States, without allowing contracting authorities to adapt to sector-specific dependencies

Legend: CA – contracting authorities; EO – economic operators

BEU impacts – Consultation results

Question: How likely do you believe the following outcomes would occur if any type of prioritisation of European products and services was to be implemented?; all replies.



IA: Annex 9, p.321

Note: Single-choice responses only; results reflect replies from those who answered.
Source: Public Consultations on public procurement reform. Commission own analysis.

Digital and IT options (MPL)

options description

PUBLIC

MPL.1 Interconnected digital marketplace

- Network of interoperable Member States' eProcurement platforms and voluntary use of EU services
- Mandatory use of a digital business credential tool such as the European Business Wallet
- Framework / IT tool for monitoring and sharing procurement data
- Marketplace to enable other policy options (FLX, ESI, BEU)

MPL.2 Centralised EU marketplace

- Central EU-wide eProcurement platform replacing Member States' eProcurement platforms for above-threshold procurement
- Otherwise, as in MPL1

MPL - Impacts

MPL.1 Administrative cost impacts (present value annualised).

	CA	EO	MS	EC	Total
EU wide cost change (€ million)	- 220	- 881	18	18	- 1 065

Note: Presented figures are rounded, though totals are calculated using precise values, which may result in minor discrepancies; The table presents the annualised present value (PV) over seven years of application at a 3% discount rate.

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Common MPL impacts

- Use one preferred platform across the EU
- Automate evidence and checks through a digital business credential tool (once-only principle)
- Reduce administrative burden and support cross-border competition
- Improve transparency and detection of irregularities
- Enable the implementation of other policy options

Additional impacts MPL.1

- Keep familiar platforms
- Preserve competition and innovation between platforms
- More complex to implement and coordinate

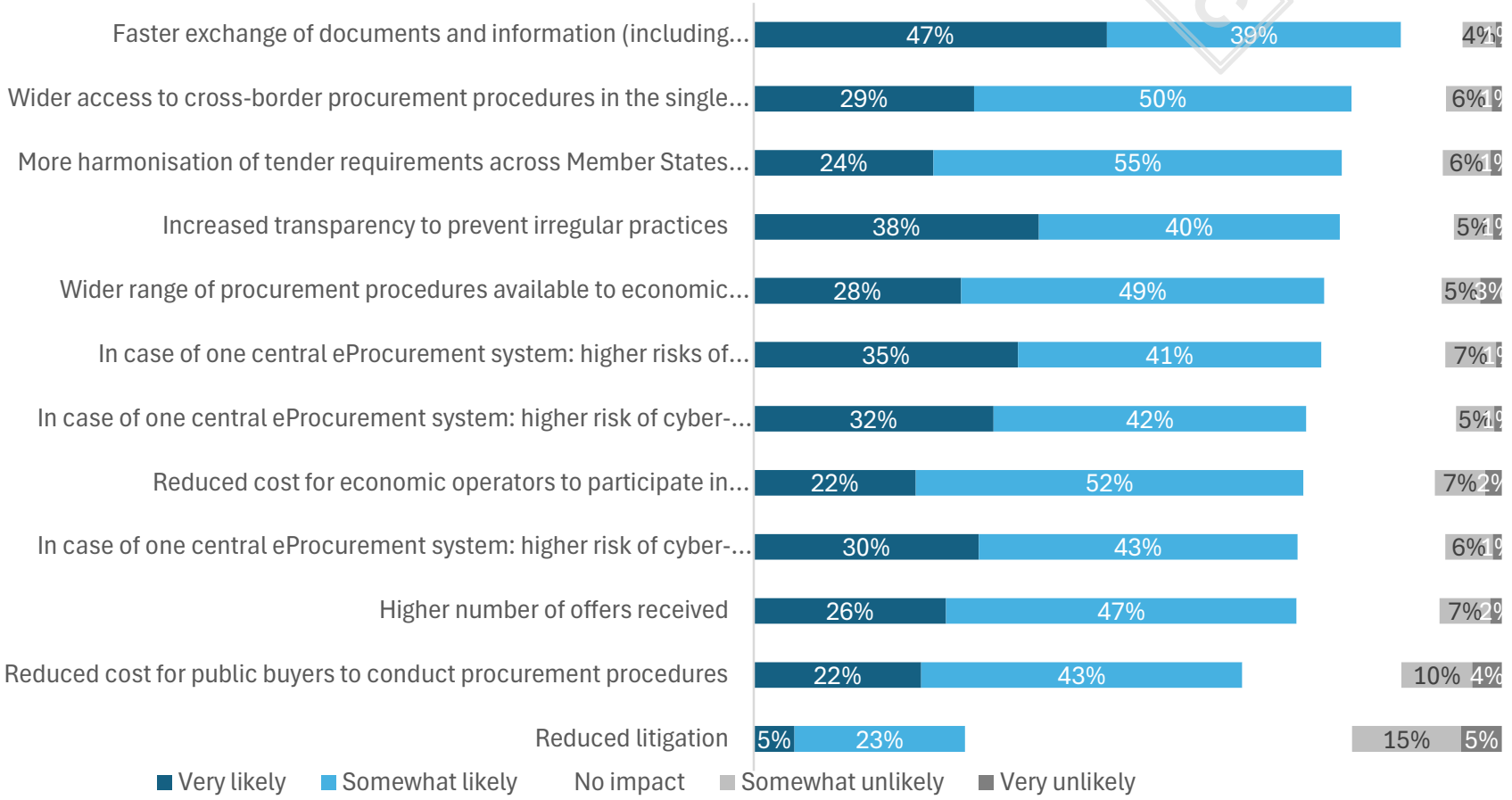
Additional impacts MPL.2

- Higher efficiency and lower maintenance costs, better data integrity
- Possible need to use two platforms for above and below-threshold procurement
- Change-management challenges + sunk cost
- Risk of weaker integration with other national systems

Legend: CA – contracting authorities; EO – economic operators; MS – Member States; EC – EU budget

MPL impacts – consultation results

Question: How likely do you believe the following outcomes would occur if such a digital public procurement marketplace is set up?; all replies.



IA: Annex 9, p.321

Note: Single-choice responses only; results reflect replies from those who answered. Please note that, due to an error, the questionnaire duplicated the option "In case of one central eProcurement system: higher risk of cyber-attacks/security breaches." To ensure no responses are omitted, this choice is presented twice in the results.
Source: Public Consultations on public procurement reform. Commission own analysis.

Comparison of Options

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Policy options / Specific objective	Effectiveness	Efficiency	Coherence
FLX.1: Improved procedural flexibility and coherence	+	-	+
FLX.2: Simplified & flexible procedures in a more coherent system	++	+	++
ESI.1: Inducing green, social and innovation procurement	++	++	+
ESI.2: Improving coherence and horizontal integration in public procurement	++	++	+++
ESI.3:Mandating green, social and innovation procurement	+++	-	+++
BEU.1: Voluntary European preference	+	0	-
BEU.2: A framework for coherent European preference in selected sectors	+++	+	+
BEU.3: Mandatory European preference across all sectors	+	--	++
MPL.1: Decentralised network of interoperable & interconnected MS procurement marketplaces	++	++	+
MPL.2: Centralised EU marketplace replacing MS marketplaces	++	+	0

Effectiveness – the extent to which options would achieve the objectives.
Efficiency - key economic, social and environmental impacts and benefit/cost ratio, cost-effectiveness of each option.
Coherence – the extent to which options are coherent with other EU policy objectives, including the Charter for fundamental rights, and with other policy initiatives and instrument.

IA: chapter 7, p.62

Preferred option

PUBLIC

Specific objective	1. Simplify and promote flexibility in procurement procedures and increase legal clarity and coherence of applicable rules (FLX)	2. Increase the uptake of environmental, social and innovation public procurement and provide a more coherent legal framework (ESI)	3. Improve EU economic security and strategic autonomy in public procurement, promoting a coherent legal framework (BEU)	4. Facilitate access to public procurement information, data and IT tools (MPL)
Policy options	FLX.0	ESI.0	BEU.0	MPL.0
	FLX.1: Targeted improvements on simplification, procedural flexibility and coherence	ESI.1: Inducing green, social and innovation procurement	BEU.1: Voluntary European preference	**MPL.1: Decentralised eProcurement platforms to establish an interconnected digital marketplace**
	FLX.2: Simplified & flexible procedures in a more coherent system	**ESI.2: Improving coherence and horizontal integration in public procurement**	**BEU.2: A framework for coherent European preference in selected sectors**	MPL.2: Centralised EU marketplace replacing MS marketplaces
		ESI.3: Mandating green, social and innovation procurement	BEU.3: Mandatory European preference across all sectors	

IA: chapter 8, p.63

Preferred option –administrative cost

(central scenario, annual, € millions)

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	Public buyers	Economic Operators	Total
New administrative burdens (INs)			
• **One off costs (ESI.1.Ecolabel)**		0.16*	0.16
• **FLX.2**	78		78
• **ESI.2.BPQR comply or explain**	55	457	512
• **ESI.2.Voluntary EU Ecolabel**		12	12
• **BEU.2**	7.4	7.4	15
Total new burden	**+141**	**+477**	**+617**
Removed administrative burdens (OUTs)			
• **FLX.2**		166	166
• **MPL.1**	220	881	1 101
Total removed burden	**-220**	**-1 047**	**-1 267**
Net administrative burdens (INs-OUTs)	**- 79**	**- 570**	**- 649**

Note: Presented figures are rounded, though totals are calculated using precise values, which may result in minor discrepancies;
The table presents the annualised present value (PV) over seven years of application at a 3% discount rate.
Additional costs to Member States of €18 million and to the EU budget of €18 million are not presented, reducing the overall savings to €613 million.
**one off cost of €1.14 million divided by 7 years to arrive at annual value over the projection period. Source: See Annexes 3 and 8.*

IA: chapter 8, p.68

Preferred option – Sensitivity analysis

Table: Annual present value of impacts of the preferred option under different scenarios and average number of bids, Assuming a 50% overlap between winning and losing economic operators, with all other elements (such as the number of procedures, number of contracting authorities and number of winning economic operators) held constant [EUR billion].

	Average number of bids→					
Scenario↓	3.1	3.2	**3.3**	3.4	3.5	3.6
0: neg.+0%; BPQR+0%; EUpref.+0%	-2.31	-1.68	-1.06	-0.43	0.20	0.82
1: neg.+2%; BPQR+4%; EUpref.+2%	-2.22	-1.59	-0.96	-0.33	0.30	0.93
2: neg.+4%; BPQR+8%; EUpref.+4%	-2.13	-1.49	-0.86	-0.23	0.40	1.03
3: neg.+6%; BPQR+12%; EUpref.+6%	-2.03	-1.40	-0.77	-0.13	0.50	1.14
4: neg.+8%; BPQR+16%; EUpref.+8%	-1.94	-1.30	-0.67	-0.03	0.60	1.24
5: neg.+10%; BPQR+18.5%;EUpref.+10%	-1.89	-1.25	-0.61	0.02	0.66	1.30
6: neg.+12%; BPQR+20%; EUpref.+12%	-1.86	-1.22	-0.59	0.05	0.69	1.32
7: neg.+14%; BPQR+24%; EUpref.+14%	-1.77	-1.13	-0.49	0.15	0.79	1.43
8: neg.+16%; BPQR+28%; EUpref.+16%	-1.67	-1.03	-0.39	0.25	0.89	1.53
9: neg.+18%; BPQR+32%; EUpref.+18%	-1.58	-0.94	-0.29	0.35	0.99	1.64
10: neg.+20%; BPQR+37%; EUpref.+20%	-1.46	-0.82	-0.17	0.48	1.12	1.77

Legend: neg.: increase in use of negotiations (percentage points);
BPQR: increase in use of BPQR (percentage points);
EUpref.: share of procurement covered by the European preference (percentage)
Note: All changes presented are relative to the baseline scenario with 3.3 bidders per tender. The time horizon for present value calculations is seven years, with a discount rate of 3%. The analysis assumes that the number of procedures, contracting authorities, and winning economic operators remains constant over the seven-year period examined.
Source: In-house analysis.

IA: Annex 8, p.246

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Thank you



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