



The Modernisation of EU public procurement Directives

Proposals of the Commission
EU procurement Directives
(replacing Directives 2004/18/EC and 2004/17/EC)
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Preparatory works

- Comprehensive **evaluation** of the impact and effectiveness of EU public procurement legislation (published 24.06.2011)
- Public **consultation** by Green Paper on the modernisation of EU public procurement policy, (synthesis of replies published 24.06.2011)
- **Conference** on the modernisation of EU public procurement policy (30.06.2011)





Results of preparatory works

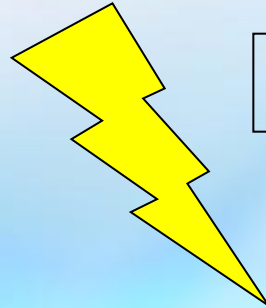
- Insufficient cost-efficiency of procedures – need for less administrative burden and more flexibility
- Room for improvement of possibilities for contracting authorities to pursue other policy goals
- Room for improvement for access to public contracts (SMEs, cross-border)
- Integrity of procedures and application of the rules to be enhanced (REGIO funding and IAS, notably)





Trade-offs

Simpler/ more flexible procedures



Strategic use

Sound procedures

Better access (SMEs, cross-border trade)

Governance / professionalization of procurement





Scope of proposal

- Proposal replaces Directive 2004/18/EC
- No changes to the Directives on Defence procurement (2009/81/EC) nor on Remedies (89/665/EEC as amended by 2007/66/EC)
- Other parallel proposals
 - Proposal on utilities procurement replacing Directive 2004/17/EC
 - Proposal on concessions





Main objectives of the reform

1. Simplification
2. Strategic use of public procurement
3. Better access to SMEs
4. Sound Procedures
5. Better Governance



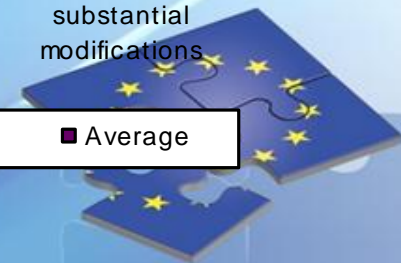
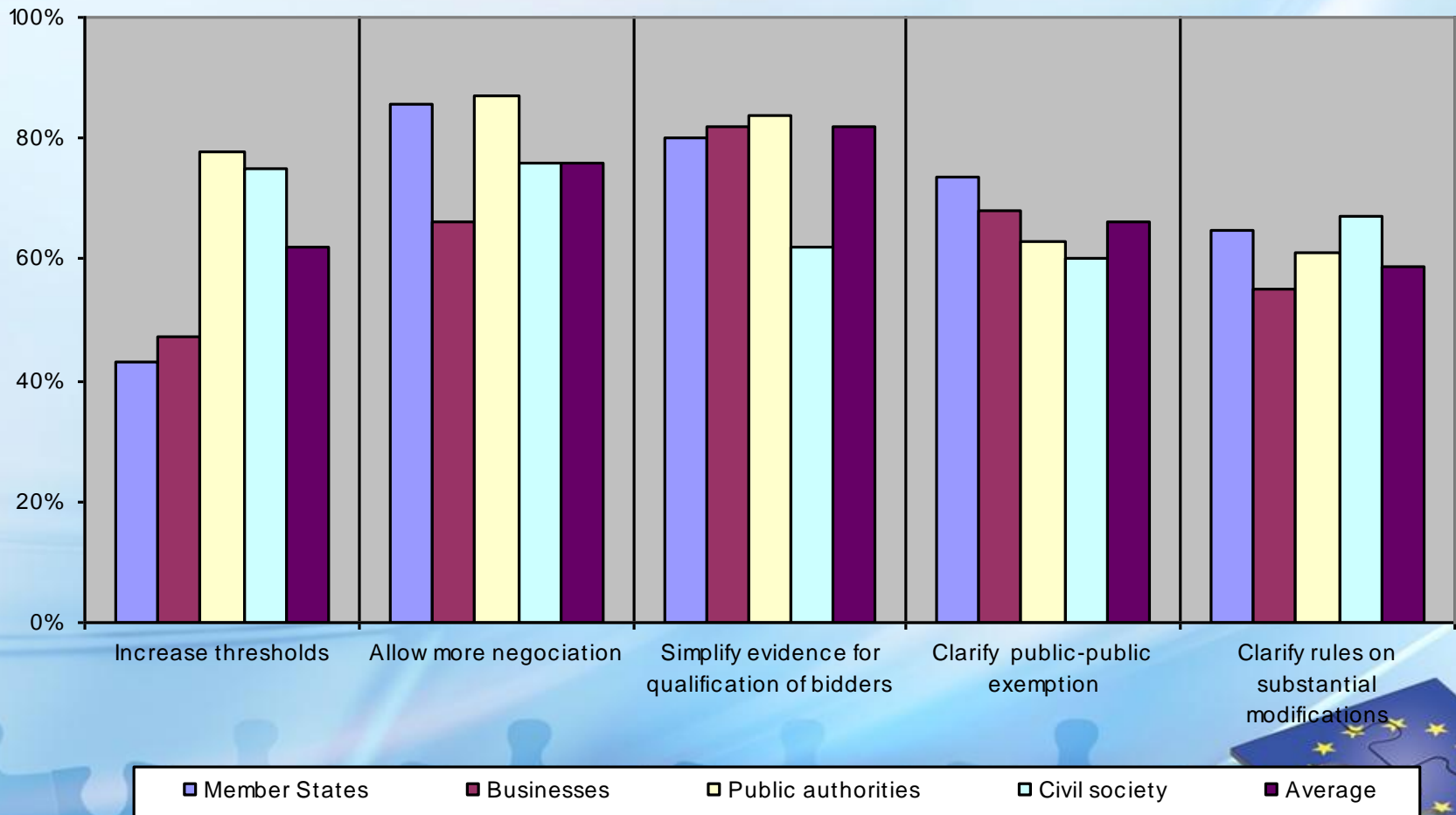


1st objective: Simplification





Simplification - Green Paper replies





1st objective: simplification

More flexible procedures

- Possibility of increased use of competitive procedure with negotiation (art. 27)
- Publication alleviations for regional and local authorities (PIN) (art. 24.2.b)
- Reduce documentation: self-declarations
- Simplification of Dynamic Purchasing Systems (no more indicative tenders) (art. 32)





Simplification (2)

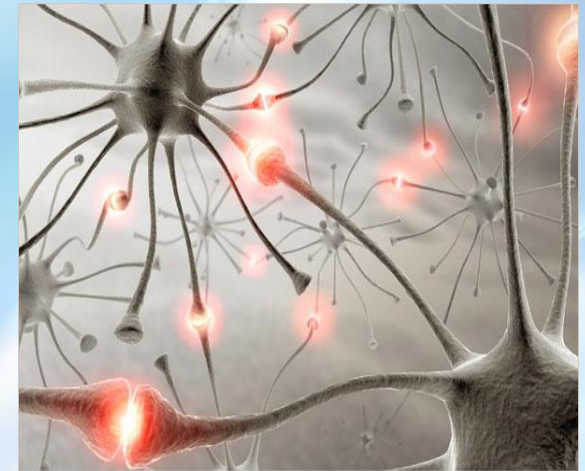
Step up e-procurement

- Step-up e-procurement: full electronic...
 - transmission of notices;
 - availability of procurement documents online from beginning of procedure;
 - communication in procedures of Central Purchasing Bodies (art. 35.4);
 - communication = mandatory 2 years after transposition deadline (art. 19.7)
- Large choice of modern electronic tools: simplified DPS, more exhaustive rules on e-catalogues and e-signatures (art. 6, 34, 19.5)



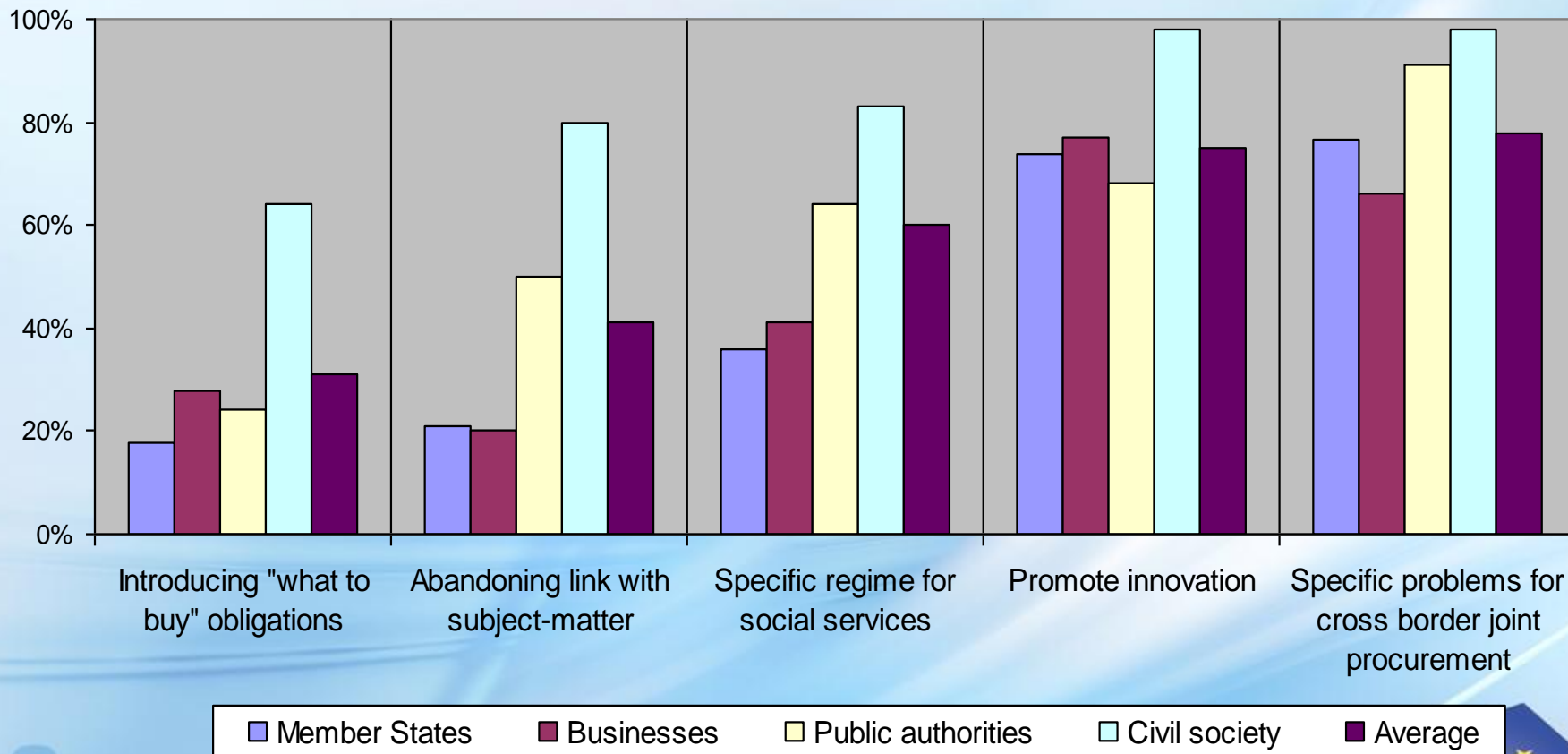


2nd objective: Strategic use of public procurement





Strategic use – Green Paper replies





2nd objective: Strategic use

- No “what to buy” obligations
- No abandoning of link with the subject matter, but softening (production process, externalities – Art. 66, 67)
- Facilitate handling of societal requirements through labels (Art. 41)
 - Specific label may be requested if requirements linked to the subject-matter of the product
 - Equivalent labels must be accepted as well
 - Possibility for economic operators to provide alternative evidence where no access to the label in due time
- Violation of EU social and environmental standards as exclusion ground (Art. 54.2; Art. 55.3.a; Art. 69.4, 2nd subparagraph; Annex XI)





« Strategic use » Social aspects (1)

- Allow production process:
 - as award criterion (Art. 66)
 - criteria related to:
 - protection of health of staff or
 - social integration of disadvantaged persons (Rec. 41)





« Strategic use » Social aspects (2)

- Sheltered workshops (Art. 17)
 - Exception extended to economic operators whose main aim is the social and professional integration of disabled and disadvantaged workers;
 - Reduction from 50% to 30% of the minimum required percentage of disabled or disadvantaged workers





« Strategic use » Social services (3)

Specific regime for Social services

- Simplified rules:
 - Higher threshold – EUR 500 000 (Art. 4 d)
 - Below threshold: typically no-cross-border interest (recital 11)
 - Above threshold: Member States free to decide on procedures, only requirement: ex-ante (+ ex-post) OJ publication (Art. 75) + non-discrimination (Art. 76 (1))
- Member States must allow contracting authorities to take into account quality criteria (Art. 76 (2))





« Strategic use » Environment

- Allow production process (e.g. paper bleach) in:
 - technical specifications (Art. 40) and
 - as award criterion (Art. 66)
- Clarify concept of **life-cycle costing**, allowing to take into account externalities if verifiable and monetisable (Art. 67.1 b)
- Existing common EU methodology = mandatory (Art. 67.3)





« Strategic use » Innovation

- Innovation partnership: new procedure for developing products and services not yet available on the market
- Joint procurement



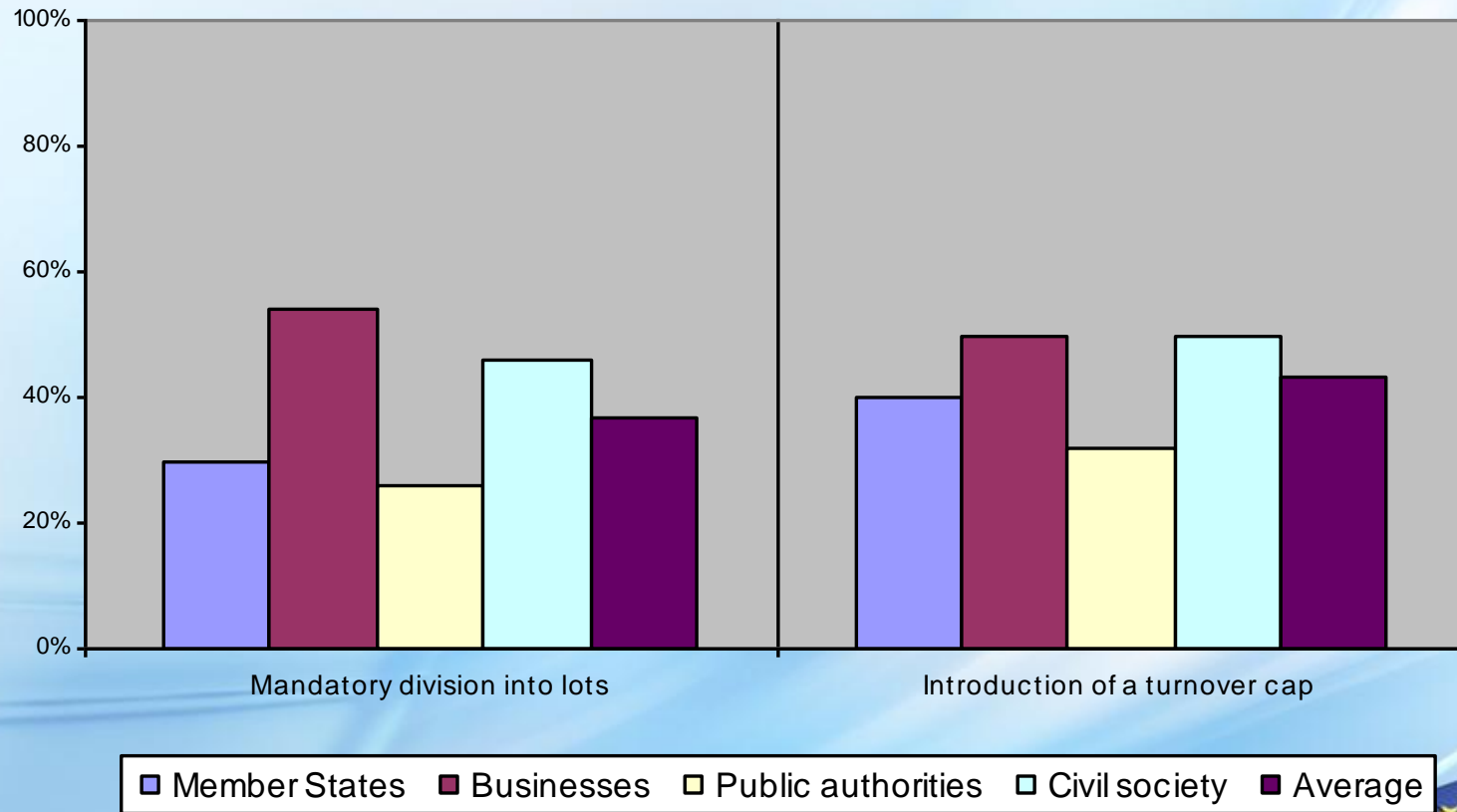


Better access for SMEs





SMEs - Green Paper replies





3rd objective: Better access - SMEs

- Simplification of documentation
- Turnover cap (art.56.3)
- Splitting into lots: “apply or explain” (art. 44)
- Possibility for Member States to foresee direct payment to subcontractors (art. 71)





Sound procedures



Single Market Act for a highly competitive social market economy





4th objective: Sound procedures

- Minimum safeguards against conflicts of interest and other illicit behaviour (art. 21, 22)
- Avoid unfair advantages because of prior association (art. 39)
- Strengthen exclusion grounds, past performance
- Strengthen rules on abnormally low tenders (art. 69)
- Clear rules for contract modifications during execution (art. 72)





5st objective: Better Governance

Professionalization of procurement





5th objective: Better Governance

- National oversight body: monitoring of structural problems, legal advice and guidance, complaints, annual report ...(art. 84)
- « Knowledge centres » : assistance to contracting authorities and business, especially for cross-border tendering (art. 87)
- Reinforce mutual assistance and information exchange amongst Member States, using the Internal Market Information system (art. 88)





Further information

[http://ec.europa.eu/internal_market/publicprocurement/
modernising_rules/reform_proposals_en.htm](http://ec.europa.eu/internal_market/publicprocurement/modernising_rules/reform_proposals_en.htm)

