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REGULATORY SCRUTINY BOARD OPINION

Public Procurement Act

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EUROPEAN COMMISSION
REGULATORY SCRUTINY BOARD

Brussels,
RSB

Opinion

Title: Impact assessment report accompanying the proposal for a revision of the EU public procurement rules

Overall 2nd opinion: POSITIVE WITH RESERVATIONS

(A) Policy context

EU rules on public procurements are set in three core directives applying to public procurement above EU thresholds. In addition, around 60 sector-specific instruments contain specific procurement provisions. The Commission Political Guidelines announced a revision of the directives to enable giving preference to European products in strategic sectors, ensure EU added value and security of supply, and modernise and simplify rules with EU start-ups and innovators in mind. In 2025 an evaluation of the directives found several shortcomings, including related to legal unclarity and incoherences, complex and rigid procedures, and uneven pursuit of green, social and innovation objectives.

(B) Key issues

The Board notes improvements in the report. However, the report still contains significant shortcomings. The Board gives a positive opinion with reservations because it expects the lead Service to rectify the following aspects:

(1) The report does not provide sufficient information on the new open procedure with negotiations. It does not explain in sufficient detail which steps would be followed in a typical negotiation, and the aspects that could be subject to negotiation.

(2) The report does not adequately specify the approach to the use of quality assessment criteria under BPQR procurement, in particular the "comply or explain" requirement, and it does not sufficiently analyse its possible implications.

(3) The report is not clear enough about the choice of method and the high uncertainties related to the cost benefit analysis and the factors that will determine the final impacts of the intervention. It also does not sufficiently describe the extent to which various assumptions may be driving the overall results of the analysis. As a consequence, some conclusions may potentially be misleading.

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(C) What to improve

(1) For the preferred option Flex2, the report needs to clarify the specific procedural steps to be carried out in a typical negotiation procedure, including rounds of negotiation and how, when and where information is documented and disseminated between different actors. The report should better explain the role of the mandatory market consultation.

(2) The report should strengthen the assessment of risks and unintended consequences stemming from a potentially more extended use of negotiations in combination with the application of quality criteria as a default option. It should explain in more detail the role of the digital marketplace in possibly mitigating risks, elaborating on the factors that would affect its effectiveness and possible cost implications.

(3) Based on an improved analysis of the magnitude of the problem related to environmental, social and innovation aspects, the report should better specify the option regarding the use of BPQR criteria. The report should be clear regarding under what conditions the "comply or explain" mechanism would apply, including in what circumstances a procurer can abstain from using any BPQR criteria. The report should assess whether it will be possible to apply the ESI criteria in all procurements, considering the requirement of proportionality and objectivity. Unintended consequences should be better assessed, including a possible increase in litigation if the proposed approach to BPQR creates legal uncertainties.

(4) The report's analysis of the expected costs and benefits of the different options should be revised, in particular the expected impacts on costs and savings, especially for preferred options on flexible and negotiated procurements, as well as the digital marketplace (taking into consideration that more than half of Member States do not have the marketplace yet). The current analysis appears to, in large part, rely on assumptions that can be driving the results of the analysis, and the report could potentially be misleading as to whether these interventions would lead to net savings or cost increases. The report should describe in sufficient detail the assumptions and the calculations on which the cost estimates of the procedures are based to allow for replicability. The report also needs to assess the impacts on competition and prices for the goods or services bought that follow from the preferred option.

(D) Conclusion

The lead Service may proceed with the initiative.

The lead Service must revise the report and its executive summary in accordance with the Board's findings before launching the interservice consultation.

Full title	Impact assessment report accompanying the document Proposal for a Revision of the EU public procurement rules
Reference number	PLAN/2025/2457
Submitted to RSB on	26 May 2026
Date of RSB meeting	3 June 2026

EUROPEAN COMMISSION
REGULATORY SCRUTINY BOARD

Brussels,
RSB

Opinion

Title: Impact assessment report accompanying the proposal for a revision of the EU public procurement rules

Overall opinion: NEGATIVE

(A) Policy context

EU rules on public procurements are set in three core directives applying to public procurement above EU thresholds. In addition, around 60 sector-specific instruments contain specific procurement provisions. The Commission Political Guidelines announced a revision of the directives to enable giving preference to European products in strategic sectors, ensure EU added value and security of supply, and modernise and simplify rules with EU start-ups and innovators in mind. In 2025 an evaluation of the directives found several shortcomings, including related to legal unclarity and incoherences, complex and rigid procedures, and uneven pursuit of green, social and innovation objectives.

(B) Key issues

The Board notes the additional information provided. However, the Board gives a negative opinion because the report contains the following serious shortcomings that the lead Service must address:

(1) The report does not adequately analyse the coherence between the intervention and the ca. 60 sectoral acts that include public procurement provisions. It does not sufficiently demonstrate how the problem driver of 'rules that vary by sector' can be addressed by the policy options, nor how the intervention would affect these rules.

(2) The magnitude of problems related to environmental, social and innovation objectives is not sufficiently analysed.

(3) The report does not specify and justify the policy options well enough. It does not explain in enough detail how quality will be defined under BPQR procurement and what this entails for the public buyers across the EU.

(4) The report does not sufficiently assess the costs and benefits resulting from the preferred option, including the impacts on competition and prices. The report does not demonstrate the proportionality of the preferred policy option.

(5) The report does not sufficiently assess the combined impact and unintended consequences of the preferred option, including the risks related to introducing more negotiations and reliance on BPQR principles at the same time.

(C) What to improve

(1) The report should analyse the coherence and interactions between the intervention and the ca. 60 sector-specific public procurement provisions. It should specify which measures in each policy option address problem driver 1 – ‘rules that vary by sector’ and ‘how the specific objective 1 to simplify and increase coherence would be achieved’. The analysis of the internal coherence of the various preferred measures and of the external coherence of the initiative with current and future initiatives including specific public procurement rules should be significantly improved.

(2) The report should substantiate the magnitude of the problems, including related to the use of environmental, social and innovation requirements in public procurement based on evidence from EU and non-EU countries.

(3) The policy measures and the choice of options must be better specified and substantiated, based on evidence. The report should provide more details on if and how quality can be defined under BPQR procurement, and if it can be objectively assessed. The report should also better analyse how potential trade-offs between different quality aspects (including environmental, social, innovation and sector-specific objectives), would be addressed under the intervention. If the public procurement act would not define quality criteria and would leave procurers the freedom to define quality according to their needs, the report needs to assess the implications of this approach. The measure ‘Buy European’ should be more clearly specified, including the approach how to identify the regulated sectors and actors that will be subject to mandatory buy European provisions.

(4) The analysis of risks and unintended consequences should be significantly strengthened and focus on the possible increase of the risks of fraud and irregularities inter alia stemming from increasing complexity due to default of BPQR; and the consequences of potentially exchanging information with some, but not all, bidders in negotiation situations. The report should analyse the effectiveness of the MPL in mitigating these risks.

(5) The report should assess the combined impact of the various policy options, including impacts following from using BPQR as the default option and increased negotiations at the same time.

(6) The report should strengthen the assessment of expected economic impacts, including by better use of observational data. The report needs to adequately assess the impacts of the policy options on competition and prices paid by public buyers and total cost of ownership. This should include the costs and benefits associated with the market outcomes that result from carrying out procurement processes including competitiveness, notably for SMEs. It should also analyse potential effects of the limitations on subcontracting and new default rules on IPR.

(7) The report should present a comprehensive overview of the administrative costs and savings for all options, including the framework for mandatory European preference.

(8) Building on the analysis in annex, the assessment of the impact of the non-voluntary ‘Buy European’ policy options should be expanded to all relevant sectors. As the

proposal intends to provide a general framework, it should assess the macro-economic impact.

(9) In view of the enabling nature of the initiative, the report should be more precise on the monitoring and evaluation framework that will be put in place to monitor and evaluate success vis-à-vis the objectives.

Some more technical comments have been sent directly to the author Service.

<u>(D) Conclusion</u>

The DG must revise the report and its executive summary in accordance with the Board's findings and resubmit it for a final RSB opinion.

Full title	Impact assessment report accompanying the document Proposal for a Revision of the EU public procurement rules
Reference number	PLAN/2025/2457
Submitted to RSB on	20 March 2026
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