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**SUMMARY OF THE RESPONSES TO THE GREEN PAPER ON EXPANDING THE USE OF E-
PROCUREMENT IN THE EU**

This document is a working document of the Internal Market and Services Directorate General of the European Commission for discussion. It does not purport to represent or pre-judge the formal proposal of the Commission.

EXECUTIVE SUMMARY

The executive summary provides a brief overview of responses to the fifteen questions posed in the Green Paper. In all, 77 responses were received. These were provided by stakeholders in 21 Member States, 12 European Organisations, 3 International Organisations and 1 EFTA State (Norway). 80% of the responses come from the two main user groups of e-Procurement: public authorities (48%) and businesses (32%).

1. What are the challenges for e-Procurement?

This section summarises views on: i) the challenges identified by the Commission; ii) the additional challenges identified by respondents

1.1 Views on the challenges identified by the Commission

Almost 60% of respondents consider that the most significant challenges to the take-up of e-Procurement and to cross-border participation in on-line procurement are correctly identified in the Green paper i.e. "overcoming inertia and fear"; "the lack of standards"; "no means to facilitate mutual recognition of national electronic solutions", "onerous technical requirements"; and "managing a multi-speed transition to e-Procurement". Overall, "Overcoming inertia and fears" is clearly identified as the main challenge to the take-up of e-Procurement. "Managing a multi-speed transition to e-Procurement" is considered, by far, the least important challenge.

1.2 Additional challenges identified by the respondents

The complexity of e-Procurement is perceived as the main additional challenge to take-up, for both technical and legislative reasons. Technical reasons cover technological sophistication, low user-friendliness of systems and the existence of too many solutions. The administrative environment is generally perceived as overly complex, sometimes requiring dedicated resources. Another seven challenges have been identified, which are in decreasing order of frequency: 1) language barriers; 2) lack of resources/uncertain pay-back; 3) differences across Member States; 4) legal uncertainties related to e-Procurement; 5) lack of justification/business case; 6) type and format of documents requested in tender procedures; and 7) security concerns.

1.3 Specific obstacles for cross-border e-Procurement

Respondents were invited to identify specific barriers to cross-border e-Procurement and to classify them into three main categories: practical, technological and administrative barriers. The issue of language barriers has been identified as the main practical barrier, while authentication/identification issues are perceived as the main technical barrier. The main administrative barrier is related to the submission of certificates in tender procedures.

2. What could the EU do to increase use of e-Procurement?

This section presents views on possible EU regulatory incentives to increase the use of e-Procurement or impose its use.

2.1 Possible EU regulatory incentives to encourage the use of e-Procurement

Respondents identified five main incentives to increase the use of e-Procurement, (in decreasing order of frequency). These are: 1) further reducing procedural timescales; 2) making e-Procurement simpler than paper procurement; 3) raising awareness about e-Procurement (trainings, user guides, and guidelines); 4) capitalising on e-Procurement benefits and 5) setting targets and penalties.

2.2 Alleviate the responsibilities of contracting authorities using e-procurement:

Opinions were divided on the idea of alleviating the obligations and responsibilities of contracting authorities. However, most respondents believe that this would make the use of e-Procurement systems more attractive as it would simplify the role of the contracting authorities. Many of those who oppose such action do not understand how the obligations of contracting authorities could be alleviated, while they acknowledge that if achieved, this would facilitate the work of contracting authorities.

2.3 Mandatory e-Procurement

53% of respondents favour making e-Procurement mandatory at EU level, while 42% oppose. "Businesses", "Citizens" and "Others" categories have a clear preference for such a measure. 50% of public sector respondents oppose mandatory e-Procurement at EU level. Arguments in favour of mandatory e-Procurement focus on setting an example and enabling take-up. Arguments against making it mandatory focus on the risk of lower participation in tenders and concerns for smaller organisations.

65% of respondents believe that EU procurement legislation should clarify the possibility for individual Member States to impose the use of e-Procurement. Many believe that Member States already have, implicitly the possibility to impose e-Procurement but would welcome making this possibility explicit. Those who do not support such clarifications believe either that this is not necessary or they prefer the mandatory imposition of e-Procurement at EU level. Alternatively, they believe that contracting authorities should be the ones to decide to use e-Procurement.

3. How should access to e-Procurement be improved?

This section summarises feedback on how to address cross-border barriers to e-Procurement and on how to facilitate SME access to e-Procurement.

3.1 Addressing cross-border barriers to e-Procurement

85% of respondents consider that EU intervention is needed to avoid the emergence of unnecessary or disproportionate barriers to cross-border participation in e-Procurement. They have a clear preference for non-legislative clarification. Respondents have identified four main actions to address cross-border barriers, which are in decreasing order of frequency: 1) clarifying authentication and identification requirements; 2) enhancing interoperability; 3) providing general requirements for e-Procurement and; 4) standardising and simplifying certificates and requirements.

60% of respondents consider that efforts to develop the EU legal and policy environment should focus on systems which support procurement procedures above the EU thresholds¹ (including systems with a mix of above and below threshold). The remaining respondents argue that all procurement should be covered.

3.2 *Improving SME access to e-Procurement*

Most respondents perceive e-Procurement as a long term opportunity for SMEs, rather than a challenge. However, certain steps need to be taken to facilitate SME participation in e-Procurement such as providing specific training and financial support, standardising and simplifying identification solutions. SMEs should be allowed to continue to use paper submission. E-Procurement is also perceived as a means to increase SME participation in public tenders, especially if: e-Procurement is easier to use than paper procurement; e-invoicing triggers quicker payments for SMEs; transparency about tender opportunities is enhanced.

4. **What are the building blocks for e-Procurement?**

This section presents views on possible modifications to the current EU legislative framework and on the preferred solutions for authentication and identification. It also summarises opinions on the standards needed to support e-Procurement and on the possible provision of open-source solutions.

4.1 *Modifications to the current EU legislative framework*

76% of respondents believe that the EU legislative framework should be modified. The remaining 24% believe that the EU legislative framework is adequate and sufficient or believe that new legislation should be undertaken with caution. Changes are proposed in the following four main areas: 1) e-signatures², 2) Dynamic Purchasing Systems (DPS)³, 3) e-catalogues and 4) attestation/selection criteria. Virtually all respondents (80%) propose legislative changes in the area of E-signatures and Dynamic Purchasing Systems (DPS), with the view to simplifying their use.

The Green Paper asks which authentication and identification solutions (including e-Signatures) are proportionate to the risks encountered in e-Procurement. Respondents are very divided on the preferred solution for authentication and identification. 6 options were advocated. The preferred solution is a combination of login + password and e-signatures (favoured by 23% of respondents - mainly public authorities). E-signatures and qualified e-signatures come second and respectively third as preferred solutions (favoured by 17% and 15% of respondents). However, 13% of respondents believe that qualified e-signatures should not be used in e-Procurement because of their complexity. 8% of respondents favour the use of any solution while 6% of respondents favour the use of login and password only.

¹ Contracts whose value exceeds the thresholds (exclusive of VAT) must be advertised in the Official Journal of the EU. The current thresholds are applicable from 1 January 2010 to 31 December 2011.

² A digital signature or e-signature is a mathematical scheme for demonstrating the authenticity of a digital message or document.

³ A DPS is an electronic way for a contracting authority to purchase certain goods, works or services, set out in Article 33 of the Public Sector Directive and Article 15 of the Utilities Directive

4.2 *EU-wide e-Procurement standards*

There is a clear preference to establish EU level standards to support e-Procurement. Respondents identified seven main areas where such standards are needed, which are in decreasing order of frequency: 1) standardising attestations and selection criteria; 2) standardising e-signatures; 3) standardising e-Procurement platforms; 4) using PEPPOL⁴ standards; 5) standardising product classification; 6) further developing e-Certis⁵; and 7) using CEN standards (European Committee for Standardization).

4.3 *Open source solutions and Commission's solutions*

77% of respondents believe that the Commission should encourage or increase the provision of open-source solutions for e-Procurement. They believe that this can trigger efficiency gains for those contracting authorities which are developing e-Procurement capabilities or are developing maturity in platforms. However, many argue that these open-source solutions should be flexible and modular in order to be successful. Almost 20% of respondents believe that the Commission should not encourage open-source solutions as the market should ultimately decide which solutions are suitable.

Almost 90% of respondents consider that the Commission should continue to make its own e-Procurement solutions available to the wider public (e.g. building on open source e-Prior). Some believe that the Commission should include such activities in the framework of an overarching plan, comprehensively expressing the final policies and goals that are to be pursued. The Commission should not only make its solutions available to the Member States but it should also share its own experience in using them and should promote these tools.

⁴ PEPPOL (Pan-European Public Procurement Online) aims to implement common standards enabling EU-wide public e-Procurement.

⁵ E-Certis is a tool that can help European companies and Contracting Authorities understand which information is being requested or provided for certification in European countries.

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I INTRODUCTION

This document provides a summary of the 77 replies to the Green Paper on expanding the use of e-Procurement⁶ in the EU. This report is published together with all the individual answers where no request for confidentiality was indicated, at: [\(link\)](#)

The public sector is the largest consumer in the EU economy, accounting for 19% of the EU's Gross Domestic Product (GDP). E-Procurement has the ability to yield significant improvements in public procurement accessibility, transparency and efficiency. According to Deutsche Bank Research, a full switch to e-Procurement may save between 50 to 70 billion Euros on public procurement in the EU per year. In the current climate of fiscal constraints and cutbacks, Europe cannot afford to ignore this potential. The ex-post evaluation of the 2004 Action Plan for electronic public procurement shows that the technology is now mature and that successful e-Procurement platforms are well-established in many regions and Member States. However, less than 5% of total procurement budgets in the first-mover Member States is awarded through electronic systems.

The Commission wishes to establish an optimal legal framework that will enable wide take-up and reap e-Procurement potential for reducing cost and improving efficiency. Action is needed in order to avoid technical or operational barriers becoming endemic in the emerging e-Procurement landscape.

The Green Paper on expanding the use of e-Procurement was published on the 18th of October 2010⁷ seeking views from stakeholders on how to:

- Fully exploit e-Procurement's potential to simplify and improve public purchasing;
- Accelerate the switch from paper to electronic procurement;
- Allow operators from other Member States to participate in on-line procurement

The European Commission thanks respondents for their valuable contributions. Their Green Paper replies will inform further Commission work on this topic including relevant proposals for modifications to EU Public Procurement Directives. Following the publication of those proposals, the Commission will also announce the actions that it intends to take to accompany these legislative changes.

This report first provides an overview of who has replied to the Green Paper, and then summarises in detail the answers to each of the fifteen questions raised in the Green Paper. This detailed presentation of views aims to capture the rich insights and valuable recommendations emerging from the consultation.

The summary of responses to the public consultation is a qualitative, rather than a quantitative exercise. References to the approximate proportion of answers in favour of a particular option are merely intended to present the answers received as clearly and accurately as possible.

⁶ E-Procurement/ electronic procurement refers to the use of electronic means by government institutions and other public sector organisations when buying supplies and services and tendering public works

⁷ COM (2010) 571 final

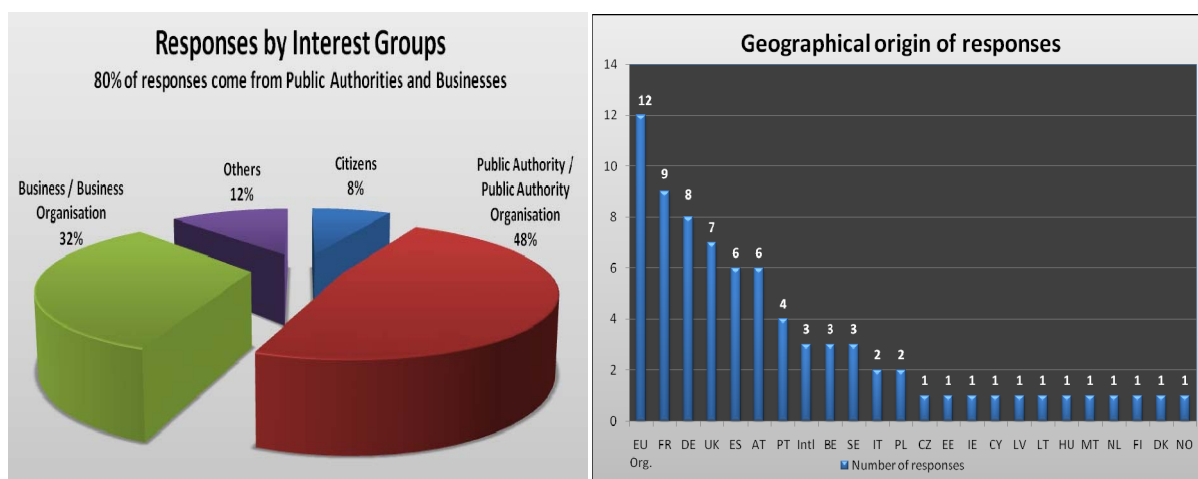
II WHO HAS REPLIED TO THE GREEN PAPER?

In all, 77 responses were received, of which 5 entirely or partly duplicated the responses of other stakeholders.

Responses were provided by stakeholders from 21 Member States, 12 European Organisations, 3 International Organisations and 1 EFTA State (Norway). The replies from EU Organisations and from stakeholders in France, Germany, UK, Spain and Austria make up almost $\frac{2}{3}$ of all replies. EU Organisations alone represent 16% of all responses.

Respondents have been classified into four broad categories based on the type of organisation they represent. 80% of the responses come from the two main user groups of e-Procurement: public authorities (48%) and businesses (32%). The “citizens” category (8 % of replies) includes academics and people replying in a personal capacity. The “others” category (12% of replies) includes international organisations, trade unions, standardisation bodies and non-profit organisations.

Many replies have been submitted by national or European representative bodies, in the name of several public authorities, businesses or civil society organisations.



III DETAILED SUMMARY OF THE RESPONSES

The detailed summary provides an extensive overview of the responses to the fifteen questions raised in the Green Paper.

1. What are the challenges for e-Procurement?

This section summarises the views of respondents on: i) The challenges identified by the Commission ii) The challenges identified by respondents (including obstacles for cross-border e-Procurement)

1.1 Views on the challenges indentified by the Commission

The Green Paper presents a series of possible obstacles to the take-up of e-Procurement and to cross-border participation in on-line procurement. It asks respondents to rank them in decreasing order of importance:

1) Overcoming inertia and fears on the part of contracting authorities and suppliers: Despite available e-Procurement technology and capacity, uptake is slow. The challenge is to persuade stakeholders to change their ingrained habits and use this new technology.

2) The Lack of standards in e-Procurement processes: The e-Procurement landscape consists of many different systems and processes, all using different technical features and functions. This creates difficulties for suppliers seeking to participate in multiple systems, as there is little possibility to re-use their previous experience as they move between systems.

3) No means to facilitate mutual recognition of national electronic solutions: Ways need to be found to recognise the equivalent solutions being developed and reduce the burden on contracting authorities and suppliers wishing to operate in a wider European market.

4) Onerous technical requirements, particularly for bidder authentication: E-Procurement solutions need to be proportionate to the risks, mutually recognisable and widely available at reasonable cost

5) Managing a multi-speed transition to e-Procurement: Different countries or regions are moving at different speeds to embrace the possibilities offered by e-Procurement. The challenge for the single market is to ensure that national/regional solutions are built in such a way that they can allow partner country suppliers to compete fairly on these systems.

Of the 60 replies received to this question, almost 60% consider that the Commission has identified the most significant challenges. Overall, they rank them in the same order as above. "Overcoming inertia and fears" is clearly identified as the main challenge to the take-up of e-Procurement. This issue is mentioned mainly by respondents representing public authorities. "Managing a multi-speed transition to e-Procurement" is considered, by far, the least important challenge. Some respondents say it is not really a challenge, but an inherent part of the market situation. The ranking of the other three challenges is less clear-cut. However, several respondents do not find it appropriate to provide rankings, either because they feel it is not necessary, or because they consider that all these challenges are inter-dependent and cannot be separated.

Three respondents consider that the challenges will differ in the pre-awarding⁸ phase compared to the post awarding phase.

Several explanations are provided for "the inertia and fear" including: ignorance of the possibilities and advantages of switching to e-Procurement; lack of professional skills and IT knowledge; no political or management support to "get to the grips with new technology or to change established manual processes and procedures"; fear to invest in a system which might not be suitable in the long term, for technological or legal reasons.

1.2 Additional challenges identified by the respondents

The Green Paper asks whether there are any further challenges to the five listed above. Of the 63 replies received to this question, about 90% consider that there are additional priority challenges not identified by the Commission. The complexity of e-Procurement is perceived

⁸ Pre-award comprises all the phases of procurement until the award of the contract (publication of the offer, access to documents, evaluation of the proposals and the award of the contract). Post-award comprises all the phases of procurement after the award of the contract (ordering, invoicing and payment)

as the main additional challenge to take-up. Other seven challenges have been identified, which are in decreasing order of frequency: 1) language barriers; 2) lack of resources/uncertain pay-back; 3) differences across Member States; 4) legal uncertainties related to e-Procurement; 5) lack of justification/business case; 6) type and format of documents requested in tender procedures; and 7) security concerns.

1) Complexity – need for user-friendly systems and legislation: (27% frequency; 17 replies: 8 from public authorities, 7 from businesses, 1 each from citizens and "others" categories): Complexity in this instance covers two main aspects: complexity of the technical environment and complexity of legislation/processes. Technical reasons cover technical sophistication, low user-friendliness of systems and the existence of too many technical solutions. Many suggest keeping technological sophistication to a minimum, and avoiding the use of jargon. According to one respondent many e-Procurement solutions are of "poor quality, not reliable and don't take companies' specificities into consideration". Some replies highlight that there are too many e-Procurement solutions within one single country, or region and that companies have to adapt to each one of them. One reply highlights possible incompatibilities between e-Procurement systems, which it is felt could explain why so many e-Procurement platforms exist. Generally there is "no exchange of current invitations to tender between the individual procurement platforms, and at best (this) is only possible through commercial service providers". As a result, some contracting authorities need to use several platforms to receive enough tenders, which complicates their tasks and fuels the existence of multiple solutions. Several respondents propose the use of central systems to concentrate public procurement operations. The legislation/processes are generally perceived as overly complex, sometimes requiring dedicated resources. "Excessive obligations (are) imposed on both contracting authorities and suppliers involved in e-Procurement procedures." Some consider that procurement legislation changes too quickly and that software developers struggle to adapt existing software to new legal frameworks

2) Language barriers (21% frequency; 13 replies, 9 from public authorities, 2 from "others" category and 1 each from businesses and citizens categories): Respondents have identified language barriers as a significant challenge to cross-border participation in (on-line) procurement. The use of different languages also triggers expensive translation costs. However, many recognise that this is not just an e-Procurement problem. E-Procurement may actually provide some solutions (e.g. platforms could provide automatic translations of all tender documents, or limiting languages to the three working languages of the Commission (DE, EN, FR) and standardising all tender documents to facilitate translations). Other suggestions relate to e-Catalogues use or improving the CPV⁹, which might simplify and further automate translations.

3) Lack of resources/ uncertain pay-back (19% frequency; 12 replies, 10 from public authorities, 1 each from businesses and citizens categories): A lack of resources (financial but also personnel, especially IT qualified) can dissuade various stakeholders from participating in e-Procurement. Many feel that this problem concerns above all smaller organisations (SMEs and small contracting authorities). Furthermore, the level of subsidies provided to those who choose to switch to e-Procurement differs across Member States. Some suggest setting up central EU funding to assist and encourage companies and contracting authorities to make the change. Several respondents are concerned that introducing e-Procurement will not

⁹ CPV = Common Procurement Vocabulary. The CPV provides a free, multilingual and broad classification covering products, works and services and is designed to meet the requirement of the public procurement sector

generate sufficient savings to repay the start-up costs, particularly if stakeholders are allowed to submit paper tenders in parallel.

4) Differences across Member States (16% frequency; 10 replies, 4 from public authorities, 4 from businesses, 1 each from citizens and "others" categories): Differences emerge at technological, legal and procedural levels making different e-Procurement systems incompatible at national, regional and sometimes even local levels. Some highlight differences in the quality of product descriptions and the use of standards for e-catalogues and contract specifications between countries. Specific national regulations are often misunderstood by suppliers. Certificates requested in certain countries cannot be provided by suppliers in other countries. One respondent suggests setting up an EU level centre of competence which would coordinate a network of regional agencies, to ensure the consistency of the e-Procurement policy across Member States. Differences also emerge between procedures for above and below EU thresholds and between the private and the public sector. Many of these challenges are not only limited to e-Procurement, but it seems that e-Procurement is expected to improve this situation.

5) Legal uncertainties related to e-Procurement (14% frequency; 9 replies: 3 "others" category, 3 Public Authorities, 2 Businesses and 1 Citizen): Some respondents believe that introducing e-Procurement can generate legal uncertainties. Many suggest that e-Procurement must meet requirements for accessibility, non-discrimination, equal treatment, transparency, integrity and accountability. Some mention that the Green Paper only focuses on the advantages of e-Procurement and ignores the hazards, particularly in systems not designed to the highest standards. The fear of non compliance is expressed in various ways:

- Personnel using e-Procurement may not be aware of the legal consequences of their actions;
- Concerns about complying with VAT rules when using e-Procurement
- In case of mistakes, no remedies seem to exist when using e-Procurement, contrary to paper procurement.
- Unclear responsibility if a tender can not be submitted because of an e-Procurement system
- Ability of senders of electronic messages to prove their messages have been delivered.

6) Justification/business case/Lack of vision (14% frequency; 9 replies, 4 from "others" category, 3 from public authorities, 1 each from businesses and citizens categories): These respondents consider there is still a need to prove and explain why e-Procurement brings benefits to stakeholders. Several respondents call for studies on whether e-Procurement facilitates market access for all companies. Some would also welcome more data on e-Procurement. One respondent says that some contracting authorities are not aware that economies of scale can be achieved thanks to e-Procurement and encourages the Commission to continue providing examples of “success stories”. Political and higher management support and a stronger business approach are considered as critical elements in adopting e-Procurement. Several respondents consider that the implementation of e-Procurement across Europe should be supported by a strong vision, clearly positioned as part of the wider e-government context.

7) Type and format of documents requested in tender procedures (13% frequency; 8 replies, 5 from public authorities and 3 from businesses): A wide variety of non standardised

documents/certificates are requested by contracting authorities across Europe, which complicates the task of suppliers. In the electronic context this can create additional problems: E-certificates are not recognised as originals by certain review bodies and certification systems for electronically submitted documents do not always exist. Also, contracting authorities may request translations for each certificate with a knock-on increase to the cost of participating in tenders. Respondents also identify problems related to the format of e-documents - some suggest that the format should always be XML and note that many contracting authorities use PDF. Others link this to issues related to appropriate archiving and storage of e-Documents.

8) Security concerns (10% frequency; 6 replies, 5 from public authorities, 1 from "others" category): Security is seen as critical for the proper functioning of e-Procurement: “If these security requirements are not guaranteed, this could lead to serious risks in respect of contractual procedures and jeopardise the trust and participation of contracting authorities and in particular of the economic operators”

1.3 *Specific obstacles for cross-border e-Procurement*

The Green Paper (Question 11) asks respondents to identify specific barriers to cross-border e-Procurement and to classify them into three main categories: practical, technological and administrative barriers. 62% of respondents replied to this question (48 replies). The issue of language barriers has been identified, by far, as the main practical barrier, while authentication/identification issues are perceived as the main technical barrier. The main administrative barrier is related to the submission of certificates in tender procedures.

a) Practical barriers: The issue of language barriers was raised again, accounting for almost 80% of the practical barriers identified. Other barriers identified are: geographical distance, cultural differences; the existence of different currencies and the time and cost needed to implement cross-border e-Procurement. One response felt that disabled people (blind in particular) could not access and use the existent e-Procurement systems.

b) Technical barriers: Authentication/Identification issues in general and E-signatures in particular account for 70% of the technical barriers mentioned. Responses range from calls for mutual recognition of e-signatures, to eliminating requirements to use e-signatures because of their complexity and cost (see 6.2). Other technical barriers include: the existence of too many e-Procurement platforms - which are not always interoperable and harmonised; downloading files on platforms is time-consuming, there is no detailed common terminology going beyond the CPV.

c) Administrative barriers: The issues related to the submission of documents/certificates in tender procedures account for 50% of the administrative barriers mentioned. Contracting authorities request different legal documents/certificates/proofs of eligibility and their translations, in different formats. Sometimes suppliers have to submit the same information in different tenders, as information is not co-ordinated centrally. Other administrative barriers mentioned are: incorrect or imprecise tender titles; complex application procedures or poor knowledge of specific country requirements.

2. **What could the EU do to increase the use of e-Procurement?**

This section presents respondents' views on possible EU regulatory incentives to increase the use of e-Procurement and on the issue of making e-Procurement mandatory.

2.1 Possible EU regulatory incentives to encourage the use of e-Procurement

The Green Paper (question 3) asks respondents to identify regulatory incentives that could encourage the use of e-Procurement. 75% of respondents have replied to this question (58 replies). All but four respondents identified incentives. Most of the incentives can be seen as a solution to the challenges discussed in section 1. Respondents have identified five main ways to increase the use of e-Procurement, which are presented in decreasing order of frequency:

1) Timescales (33% frequency; 19 responses, 11 from public authorities, 7 from businesses, 1 from a citizen): Out of the 19 replies mentioning timescales, 68% favour further reductions, whilst 32% are against. Those who propose reducing timescales refer not only to the situation currently covered by the Procurement Directives (reduced timelines for the receipt of tenders are allowed when notifications are submitted electronically or when the contract documents are available on the Internet). They also propose reducing the "standstill period" when e-Procurement is used. This is the period during which companies can complain to contracting entities when they feel a contract has been awarded unfairly. Some propose maintaining the current timescales but granting these reductions only if tenders are conducted entirely electronically or if both the notification is submitted electronically and the contract documents are available on the Internet. Those who oppose further reductions often refer to the fact that this could reduce the number of participants and ultimately reduce competition. Furthermore, some consider that suppliers might not have enough time to submit their offers; this would particularly affect SMEs.

2) Simplify e-Procurement (31% frequency, 18 replies, 9 from public authorities and 3 each from businesses, citizens and "others" categories): Making e-Procurement easier to use than paper procurement can constitute another incentive: "Everyone involved should feel that the process is an improvement over the non «e» way of doing business." Proposals to simplify legislation evolve around: EU law providing simplified procedures when e-Procurement is used, particularly in pre-award, by ensuring e-procedures are not subject to stricter rules than paper; further standardisation of public procurement rules; and re-using an electronic tender across different competitions.

Some suggest actions to reduce the proliferation of e-Procurement technical solutions, such as: setting de minimis levels for e-Procurement systems; labelling or limiting platforms to those which ensure security, confidentiality and interoperability; ensuring that platforms are compatible and exchange data, particularly invitations to tender.

Some suggest that the EU should simplify and standardise declarations, certificates, proof of eligibility and post-verification requirements and use registers containing information on bidders (see 3.2). Published TED (Tenders Electronic Daily) notices should clearly require website addresses to be identified, from where tender documents can be downloaded. Proposals to simplify the use of e-Procurement platforms include: gradually transferring the task of checking participation requirements from the contracting authority to the e-Procurement system, harmonising the main features of platforms (e.g. same symbols placed in same places across platforms). One respondent suggests identifying practices of simple e-Procurement implementations and sharing them with the e-Procurement community.

3) Raise awareness, build capability (24% frequency, 14 replies, 5 from public authorities, 4 each from businesses and "others" category and 1 from a citizen): Raising the awareness about e-Procurement and building capability are perceived as means to encourage wider use. Proposed actions at EU and Member States levels include: providing customised trainings addressing specific stakeholders' needs; creating user guides and guidelines for e-Procurement

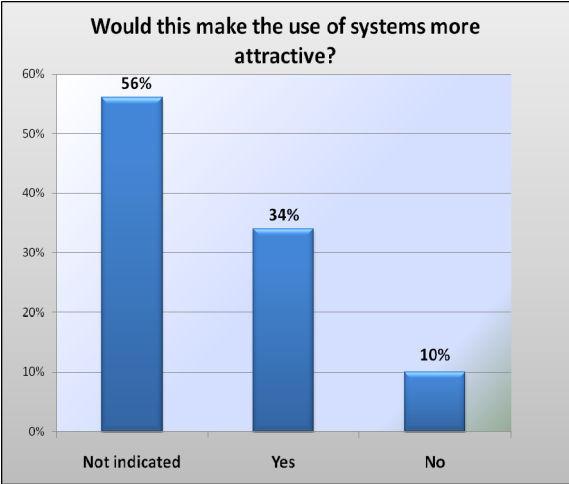
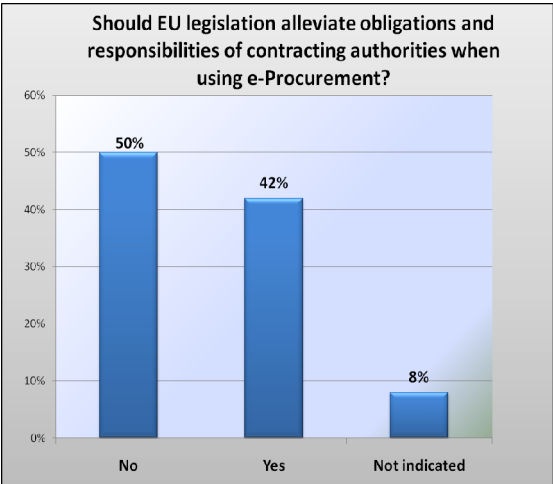
and teaching stakeholders how to use e-Procurement systems. The Commission could facilitate and support initiatives within countries to build capability and lead change management programmes. EU funded communication programmes could be set up to present benefits, share best practices, create "living labs" and provide guidance on implementation standards.

4) Capitalise on e-Procurement benefits and provide financial incentives (14% frequency, 8 replies, 4 from businesses, 2 from public authorities, 1 each from citizens and "others" category): Many of the suggestions presented here relate to national or local solutions. Some suggest that individual contracting authorities should be allowed to carry over any budgetary savings they generate from e-Procurement to the next fiscal year. Performance bonuses or targets for senior public management could be introduced to make sure that higher management would support the switch over. One respondent proposes reducing the frequency of internal audits when e-Procurement systems are used. Others call for financial incentives such as: compensating SMEs for the expenses incurred in adapting technologically; temporarily reducing publishing and processing fees when e-Procurement is used; or providing EU funds for the standardisation of regional platforms.

5) Set targets and penalties (12% frequency, 7 replies, 3 from businesses and 2 each from public authorities and citizens): Some respondents propose setting targets and penalties to increase the use of e-Procurement, some of which could also be combined with incentives. For example they propose setting a target date for using e-Procurement for all procedures (e.g. 2020) or more gradual targets (as a percentage of procurement spent). Those who favour targets argue that these allow contracting authorities a degree of autonomy as to how to accomplish the result. Others propose penalising candidates that submit paper bids by increasing the price of their offer by a certain % or amount of money, or withholding support from EU funds from local/regional authorities that refuse to use e-Procurement.

2.2 *Alleviating the obligations of contracting authorities when e-Procurement is used, as a means to increase the use of e-Procurement*

The Green Paper asks respondents the following two questions (Question 4):



Opinions are divided on the idea of alleviating the obligations and responsibilities of contracting authorities. However, most respondents believe that this would make the use of e-Procurement systems more attractive as it would simplify the role of the contracting authorities. Many of those who oppose such action do not understand how the obligations of

contracting authorities could be alleviated or made legally possible, while they acknowledge that if achieved, this would facilitate the work of contracting authorities.

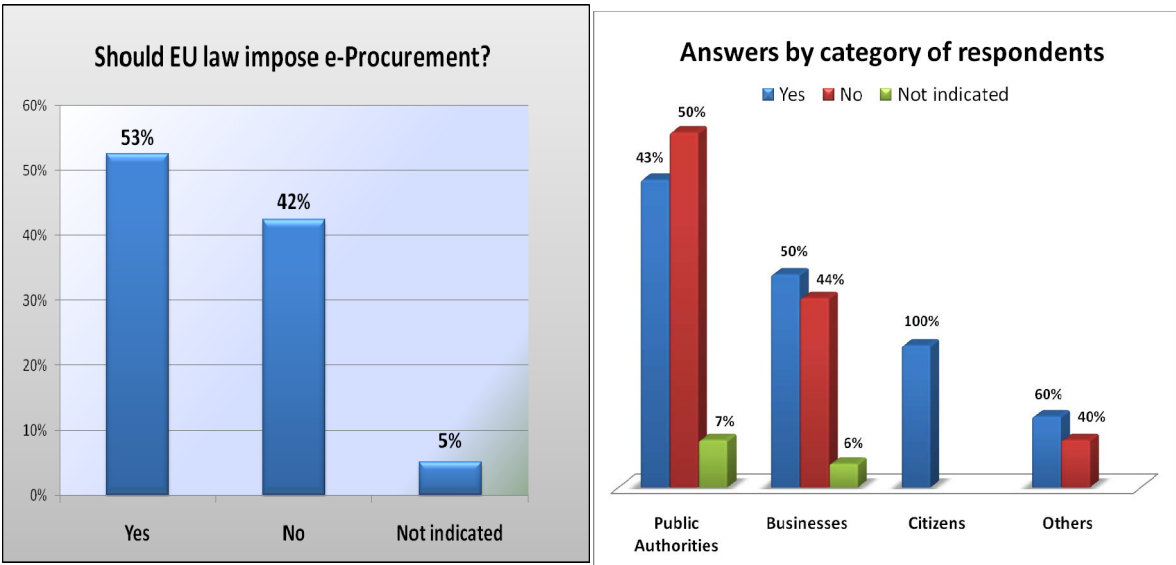
If some obligations of contracting authorities are shifted to e-procurement systems, who would be responsible for addressing infringements and process errors? Many argue that such measures would decrease the trust in e-Procurement systems, and that legal security should be the highest priority. Some also think that this could increase the costs of using e-Procurement as there will be an increased need for regular audits. Such measures could also complicate platform use, create confusion and have a negative impact on suppliers.

Those in favour of shifting some of the contracting authorities' obligations onto the e-Procurement systems justify this on the grounds that e-Procurement is more traceable than paper procurement. Moreover such measures would reduce the work load of procurers, as some procedural aspects would be automatically engineered into the e-Procurement systems.

Many consider that in order to alleviate obligations, a third party organisation must certify that e-Procurement systems meet procedural and legal requirements (non-discrimination, equal treatment, integrity) without creating undue bureaucracy. One respondent proposed the creation of a central certification body such as a Procurement Ombudsman.

2.3 *Mandatory vs. non-mandatory e-Procurement at EU level.*

The Green Paper (question 5) asks respondents whether EU legislation should permit the imposition of electronic procedures for some procurement. 77% of respondents replied to this question (59 replies).



53% of respondents favour making e-Procurement mandatory at EU level, while 42% are against. While "Businesses", "Citizens" and "Others" categories have a clear preference for such a measure, 50% of public authorities are against mandatory e-Procurement at EU level. Arguments in favour of mandatory e-Procurement focus on setting an example and enabling take-up. Arguments against focus on possibly lower participation in tenders and concerns for smaller organisations. Many also refer to the need to address the existing challenges first. Irrespective of whether respondents are for or against mandatory e-Procurement, a majority believes that if e-Procurement were to be made mandatory it should only cover some types of

procurement. Preference is given to pre-award and above EU thresholds procurement, to negotiated, open and restricted procedures, and to standardised products/services/works.

Arguments for mandatory e-Procurement: Some argue that introducing mandatory e-Procurement could immediately provide the critical mass needed for e-Procurement to deliver the expected benefits. This could even create "spill-over" not just to those procurement areas which have not been "e-enabled" but also to other public administration activities. In their opinion, mandatory e-Procurement at EU level would ensure that technology is used uniformly across Member States and that no blank spaces will emerge. Others suggest that this would be the best way to overcome "inertia and fear". Many of those who support mandatory e-Procurement, impose conditions such as: making sure that the transition is progressive and takes place over time (e.g. 3, 5 or 10 years); existence of appropriate regulations in place in all Member States; EU and Member States investment in the necessary technological infrastructure and suitable support services; ensuring reliable broadband Internet infrastructure and that access and interoperability issues have been solved.

Arguments against mandatory e-Procurement: E-Procurement could reduce fair competition and restrict the number of participants in public tenders, especially amongst SMEs, as those who do not have access to this technology would not be able to participate.

Others suggest that imposing e-Procurement could raise concerns for smaller contracting authorities and SMEs, which have limited resources and staff and may not be able to cope with such a structural shift in procurement markets (which could be time consuming and expensive to implement).

Others believe that certain existing challenges should be addressed first, such as: interoperability, security of sensitive data, standardised eligibility criteria and certificates, decreasing the number of e-Procurement solutions and the complexity of systems. Since the level of "e-maturity" and the conditions for contracting authorities and suppliers is different across Member States; imposing e-Procurement may not take into account these differences. Some respondents argue that contracting authorities should be the ones to decide whether e-Procurement is used. One respondent says that e-Procurement should not be envisaged as long as potential impacts on price dumping, wage dumping or negative impacts on workers have not been assessed. Several press organisations indicate that the impact on private publishers and the Media sector should be assessed.

What type of procurement should be mandatory? A majority of respondents considers that if e-Procurement were to be made mandatory it should only cover some types of procurement, depending on the phases (pre or post-award), the type of procedures, the type of products, services or works and the amount (above or below EU thresholds).

Most respondents focus on making e-Procurement mandatory for pre-award believing that this would be easier to achieve. In their view, post-award is not suited at present. Furthermore electronic auctions and tendering should be made mandatory as these areas could deliver most of the savings. Some also favour the mandatory use of e-catalogues and DPS.

Negotiated, open and restricted procedures are considered as suitable for e-Procurement. However, many respondents consider that e-Procurement is not suitable for complex tenders where various award criteria or complicated lots systems are used. They suggest using e-Procurement for more standardised products/services/works, where the level and quality is well defined, where standard formulas can be used for the awarding or where simple selection criteria exists (e.g. lowest price). Most respondents consider that mandatory e-Procurement at

EU level, should cover above threshold procurement; and may be gradually introduced to below thresholds.

Some argue that e-Procurement should be introduced for all procurement. Introducing mandatory e-Procurement only for some procurement favours the use of paper and electronic procurement in parallel and may create confusion and increase cost.

2.4 EU Clarification of mandatory use of e-Procurement

The Green Paper (question 6) asks respondents whether EU procurement legislation should clarify the possibility for individual Member States to require the use of e-Procurement. 62% of respondents replied to this question (48 replies); of whom about 65% believe that the EU should provide such clarification. Many believe that Member States already have, implicitly the possibility to impose e-Procurement but would welcome making this possibility explicit. However, many of those who support such clarifications believe the imposition of e-Procurement at national or regional levels should be made under certain conditions. Some believe that the EU could help define those conditions. Those who do not support such clarifications believe: either that this is not necessary; or they prefer the mandatory imposition of e-Procurement at EU level; or they believe contracting authorities should be the ones to decide to use e-Procurement.

Arguments for clarification: Many observe that EU law already permits Member States to impose the use of e-Procurement. They refer to Portugal (where e-Procurement is mandatory for all procedures) and to France (where the use of e-Procurement is mandatory for ICT related products above 90 thousands Euros). They suggest that Member States, or regions should decide whether imposing e-Procurement is appropriate, based on the level of "e-maturity" of different market segments, on the degree of purchasing centralisation and on the level of infrastructure development (e.g. broadband).

Conditions to be met before imposing e-Procurement at national or regional levels: Respondents suggest conditions such as: safeguarding the principles of transparency, equal treatment, non discrimination and proportionality; maturity of infrastructure; mutual recognition of e-signatures. Some believe that the EU could provide guidelines or define the conditions under which e-Procurement can be imposed, while Member States would have to create these necessary conditions. "The effectiveness of these «decentralised» impositions is considered to be greater when paired with clear and commonly shared European guidelines".

Arguments against clarification: Of those who do not support clarification of conditions for Member States imposition, about 15% consider that e-Procurement should become mandatory at EU level. The remaining 85% believe that the imposition of e-Procurement at national level, would increase national differences and fragment the Internal Market. They also believe that neither the EU, nor Member States or regions should impose e-Procurement and that contracting authorities should decide if using this technology is appropriate.

3. How can access to e-Procurement be improved?

This section summarises feedback on whether the EU should focus on below or above EU thresholds procurement, on how to address cross-border barriers to e-Procurement and on how to facilitate SME access to e-Procurement.

3.1 *EU efforts to focus on above EU thresholds or below?*

The Green Paper (Question 8) asks respondents whether they consider that efforts to develop the EU legal and policy environment should focus on: systems which support procurement procedures above the thresholds laid down in EU Directives (including systems with a mix of above and below threshold); or larger systems dealing with a certain de minimis level of procurement (by monetary value or percentage of total national procurement).

More than half of the respondents replied to this question. 60% of those who replied consider that efforts should focus on systems which support procurement procedures above the EU thresholds (including systems with a mix of above and below threshold). Amongst these, half specified that efforts should focus only on systems which support procurement above thresholds. Those who support larger systems argue that all procurement should be covered. Several respondents explain that the Commission should not differentiate these two types of systems, as this can create confusion.

Seven respondents believe that supporting e-Procurement development below EU thresholds would encourage SME participation. In their opinion, it is often difficult for SMEs to learn about tender opportunities. E-Procurement would make these opportunities widely available. Three respondents believe that the development of e-Procurement below EU thresholds would trigger negative effects for SMEs as this would expose them to competition from bigger companies against which they might not be able to contend. According to this view, centralised and aggregated e-Procurement would also naturally favour larger companies.

3.2 *Addressing cross-border barriers to e-Procurement*

The Green Paper (Question 7) asks respondents whether EU intervention is needed to avoid the emergence of unnecessary or disproportionate barriers to cross-border participation in on-line procurement procedures or systems. Respondents are asked to choose between legislative and non legislative clarifications.

54 responses were received. Of these 54 replies, 85% consider that EU intervention is needed to avoid the emergence of unnecessary or disproportionate barriers to cross-border participation in e-Procurement. They have a clear preference for non-legislative clarification. Respondents have identified four main actions to address cross-border barriers, which are in decreasing order of frequency: 1) clarifying authentication and identification requirements; 2) enhancing interoperability; 3) providing general requirements for e-Procurement and; 4) standardising and simplifying certificates and requirements.

1) Clarifying Authentication/identification - e-signatures (19% frequency) - see 4.2: Many respondents call for EU clarifications regarding the appropriate level of security needed in authentication and identification and for enhanced mutual recognition of e-signatures. Respondents would like to know which procurement processes/transactions should be covered by lighter solutions (e.g. login and password) and which areas should be covered by e-Signatures. Several respondents consider that "an overhaul of the Electronic Signatures Directive is urgently required" to simplify the requirements and allow more suppliers to participate in e-Procurement.

2) Enhanced interoperability (17% frequency): Many respondents call for guidance on minimum common requirements to ensure the interoperability of e-Procurement systems. For many, such guidance could take the form of an interpretative communication. The EU could also offer suggestions for the coordination of existing interoperability initiatives, for example

in Germany, where a cross sector project "XVergabe" was initiated to achieve the interoperability of German e-Procurement platforms. According to others the EU should make sure that the market does not "split into groups, each linked to systems with their own functional specifications". Several respondents support projects such as PEPPOL and e-Certis as solutions to ensure e-Procurement interoperability.

3) Providing general requirements (15% frequency): A number of respondents consider that the EU should support Member States by establishing basic principles and concepts as to how e-Procurement systems should operate and interact. Some suggest that the type of technology used in e-Procurement should be web-based. Today suppliers may have to bear high investments to integrate with e-invoicing platforms or might have to install equipment from several systems. Performing e-Procurement using web-based interfaces would require lower investments, would be more user-friendly and would be non-discriminatory. Others consider that the EU should define the minimum set of standards for cross-border e-Procurement, via recommendations, opinions, communications and sometimes through law. One respondent suggests that it should be clarified or regulated through law that public invitations to tender and open procedures should always be freely accessible and available for consultation without having to pay for a subscription. This situation is perceived as "counter-productive, given that, particularly in border areas, entrepreneurs might very well be interested in a national invitation to tender which could perhaps not be found without a subscription". Others call for EU law establishing a Virtual Company Dossier (VCD)¹⁰, for uniform or common terminology for e-Procurement, or suggest that the EU should prevent the existence of requirements that suppliers have to be physically present in a particular Member State.

4) Standardising and simplifying certificates and requirements (Frequency 11%): The solutions proposed here address the issues raised under point 1.3 (the submission of documents and certificates in tender procedures accounted for 50% of the administrative barriers to cross-border procurement mentioned). Solutions are proposed in three main areas: standardising forms and certificates, simplifying rules for certificate requests and facilitating access to existing certificates. Many want standard forms for tender submissions and a unique list of exclusion criteria. Electronic certificates and documents should be accepted by all contracting authorities as originals. A large number of respondents suggest that tenderers should "self-certify" and only successful bidders should provide the statements/certificates. The translation of documents should only be requested after the selection of the candidate. Some suggested that the EU could create legislation that favours the storage of attestations on one single European system, where any contracting authority could access it. Thus, suppliers would only have to submit a certificate once, as the contracting authority would post the certificate on the central system. Others suggest storing pre-qualification data that enables national identification on interoperable national registers. Some respondents want to mandate e-Certis as a central location for pre-qualification documents or to make it legally binding. Many encourage the cooperation between Commission's E-Certis and PEPPOL's VCD. VCD could also become legally binding while its cross-border recognition could be ensured.

3.3 *Improving SME access to e-Procurement*

The Green Paper (Question 15) asks respondents what further steps the EU might take to improve the access of suppliers, particularly SMEs, to e-Procurement systems. 78% of

¹⁰ The Virtual Company Dossier (VCD) has been developed by PEPPOL to address the demand for better interoperability in electronic tendering offering simplification, transparency and electronic monitoring of supplier qualifications in public procurements

respondents answered this question (60 replies). Most respondents perceive e-Procurement as a long term opportunity for SMEs, rather than a challenge. However, certain actions need to be put in place in order to increase SME participation in e-Procurement such as providing specific training and financial support, standardising and simplifying identification solutions and allowing SMEs to continue to use paper submission. E-Procurement is also perceived as a means to increase SME participation in public tenders, especially if e-Procurement is easier to use than paper procurement; if e-invoicing triggers quicker payments for SMEs; or if transparency about tender opportunities is enhanced.

1) Conditions for SME participation in e-Procurement:

a) Specific support needed: About 27% of the 60 respondents mention that specific support for SMEs is needed. Member States, but also the EU can provide "customised" trainings, guides, guidelines and information campaigns to explain and promote the benefits of e-Procurement. Best practice sharing and living labs can be developed. Answers suggest that trainings could be provided in face to face sessions or through simple online trainings. One respondent suggests the creation of an EU level centre of competence to facilitate the launch of initiatives to SMEs in Member States, in accordance with a plan and defined objectives. Web-self service interfaces for SMEs could also be created. One respondent encourages the Commission to carry out studies to understand and prioritise SMEs specific needs.

b) Costs of using e-Procurement and financial aids: 15% of respondents believe that e-Procurement should not trigger significant investments or costs for SMEs e.g. due to expensive subscriptions or licences. They believe that some form of economic aid should be provided to SMEs to compensate their efforts to adapt to e-Procurement. SMEs should also be assisted in obtaining to the necessary technical equipment.

c) Standardisation and simplification of identification and authentication solutions (10% frequency): Identification and authentication should be cheap and easy so that these processes do not create barriers for SME participation in e-Procurement

d) Paper bidding should still be possible (5% Frequency): Some respondents mention that SMEs should have the choice between paper procedures and e-Procurement. One reason is that broad-band internet solutions are less developed in rural areas, where SMEs are often present. However, e-Procurement should be sufficiently simple so that SMEs would prefer it.

2) How e-Procurement could increase SMEs participation in public tenders:

a) Simplification: A wide-spread idea (mentioned by 42% of the 60 replies) is that e-Procurement systems and legislation should be user-friendly and simple. This would be a major incentive for SME participation in public tenders. E-Procurement systems should concentrate information in a single web-space and provide easy access to notices and documents and automate notifications. Several respondents propose the introduction of a simple electronic procedure for lower value contracts (which interest SMEs) such as e-auctions in Poland. One respondent suggests carrying out a study to identify the number of e-Procurement platforms and define which ones are successful and meet the needs of SMEs. An EU portal could be created containing links to national e-Procurement systems. The portal would describe the requirements of national e-Procurement systems.

b) Standardise and simplify certificates and requirements, quicker payments - 13% frequency (see point 5.2 for more details): Several respondents propose that attestations should only be provided by winning bidders. Forms, documents and attestations should be standardised

within the EU and selection and award criteria could be harmonised. Several respondents mention that E-invoicing can trigger quicker payments for SMEs, which can reduce their cash problems. One respondent proposes the division of contracts into lots to increase SMEs participation in public tendering.

c) Other benefits of e-Procurement: E-Procurement could provide detailed spend analysis, including how much money is spent on contracts with SMEs. "The EU should promote the importance of public sector bodies publishing up-to-date spend data online as part of any overall action plan for increasing SME access to public sector contracts". Suggestions made include: free contract finder platforms informing SMEs of relevant opportunities and public authorities flagging contracts as SME friendly on e-Procurement platforms. One respondent suggests that all EU supported e-Procurement initiatives should include a certain percentage of SME pilot participants in the project, as a requirement to receive the funds.

4. What are the building blocks for e-Procurement?

In this section we present the views of respondents on possible modifications to the current EU legislative framework and on the preferred solutions for authentication and identification. We also analyse the views of respondents on the standards needed to support e-Procurement and on the possible provision of open-source solutions.

4.1 Modifications to the current EU legislative framework

The Green Paper (Question 9) asks respondents if there is a need to modify or update the current EU legislative framework on e-Procurement. About 64% of respondents replied to this question (49 replies). Of these 49 replies, 76% believe that the EU legislative framework should be modified. The remaining 24% believe that the EU legislative framework is adequate and sufficient or believe that new legislation should be approached with caution. Changes are proposed in the following four main areas: 1) e-signatures, 2) Dynamic Purchasing Systems (DPS), 3) e-catalogues and 4) attestation/selection criteria. Virtually all respondents (80%) propose legislative changes in the area of E-signatures and Dynamic Purchasing Systems (DPS).

1) Authentication/identification – e-signatures (Frequency 37%) - see point 4.2: Respondents suggest various changes to both the E-signature and the Procurement Directives. Several respondents consider that qualified e-signatures should become the only form of e-signature allowed in e-Procurement. Others consider that a preference for qualified e-Signatures should not exist in the EU legislation as legislation should be technologically neutral. The security level of e-signatures should be based on risk assessments or failed identification solutions. Others support the use of light solutions (login & password) throughout the e-Procurement process.

2) DPS (Frequency 37%): Most respondents observe that the use of DPS is limited within the EU, while framework agreements are highly used. The complexity of the DPS and the high management costs it generates for both contracting authorities and suppliers are given as reasons for its low levels of use. Suggestions range from simplifying DPS to eliminating it because it is not adapted to contracting authorities' needs. Some feel the Commission should provide a clearer definition of DPS and explanations about its functioning, emphasising on the benefits of its utilisation. Many respondents suggest removing the requirement that "contracting authorities need to place a further advert asking if any other suppliers want to be included, before inviting suppliers on the system to bid" (article 33(5) of Directive 2004/18/EC). They feel this requirement generates much of the complexity. One respondent proposes a solution

that would simplify the DPS while allowing it to remain open to new suppliers throughout its duration. “It would seem to be a case for simplification and more efficient procurement if the call for competition could be limited to those economic operators who have submitted an indicative tender and fulfil the qualification criteria of the DPS. The existence of the DPS could be the subject of a standing list in TED that should be possible to search by interested economic operators.”

3) E-catalogues (Frequency 12%): There is some call for the Commission to provide a clearer definition of e-catalogues. Some feel that EU legislation should not only link e-catalogues with framework agreements and DPS. Others suggest that the Commission should “introduce incentives for suppliers to produce and maintain eCatalogues”. Some noted that no regulatory standards for e-catalogues exist, as references in the recitals have no legislative value.

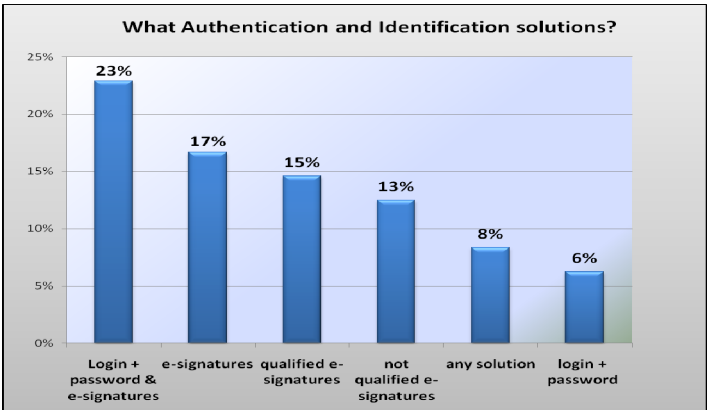
4) Attestations/selection criteria (Frequency 10%) – see point 3.2: Some suggest making changes to the current legislative framework to simplify and harmonise selection and exclusion criteria. Tenderers should "self-certify" and only successful bidders should provide the statements/certificates. The acceptability of e-certificates should be explicit within the EU legislative framework.

Various other changes are proposed such as: providing guidance on minimum common requirements, making the VCD legally binding, reviewing timelines for the submission of tenders, clarifying e-auctions or making them mandatory.

The definition of electronic means of communication could be up-dated to focus more on the use of e-Procurement systems as a transmission method. Several respondents believe that any changes to the legislative framework should be consistent with the modernisation of public procurement and should be communicated “in plain language to public bodies”. Any changes “should, where applicable, also be mirrored in the Directive 2009/81/EC on defence and security procurement, to avoid inconsistency”.

4.2 Authentication and Identification solutions for e-Procurement

The Green Paper (Question 10) asks which authentication and identification solutions (including e-Signatures) are proportionate to the risks encountered in e-Procurement. 62% of respondents replied to this question (48 replies). Respondents identified six main options for authentication and identification.



The preferred solution is using both login + password and e-signatures. E-signatures and qualified e-signatures come second and respectively third as preferred solutions. However, 13% of respondents believe that qualified e-signatures should not be used in e-Procurement

because of their complexity. 8% of respondents favour the use of any solution while 6% of respondents favour the use of login and password only.

1) Login and password + e-signatures, 23% of respondents (11 replies, 7 from public authorities, 2 from businesses, 1 each from citizens and "others" categories): These respondents favour using both light solutions (login and password) and e-signatures as means for authentication and expression of consent. These respondents come mainly from BE, AT, SE, DE, CY, UK, IE and EU and International organisations. They believe that user-name and password can be sufficient "where the risks are judged to be minimal", while e-signatures could be used where sensitive data are transferred. Views are split on when in the procurement process login and password should be used. According to some, these are suitable for the whole pre-award phase, where risks are minimal as the interested parties only gain access to notices, documents and clarifications, which do not interest hackers. E-signatures should be used in post-award where financial and sensitive data is involved. Others believe that user-name and password should be used in the vast majority of procurement transactions, or that individual contracting authorities should decide based on the risks identified and the size of the tenders.

2) E-signatures, 17% of respondents (8 replies, 4 from businesses, 3 from public authorities and 1 from citizens): These respondents believe that e-signatures are proportionate solutions to the risks encountered in e-Procurement. They come from FR, ES, MT, UK and DE. These respondents argue that e-signatures provide a high degree of security which ensures trust, but do not specify the type of e-signature they prefer. Some consider that the level of security of e-signatures should be defined and harmonised across the EU. Several consider that ensuring the mutual recognition of e-Signatures and electronic certificates is a priority.

3) Qualified e-signatures, 15% of respondents (7 replies, 5 from public authorities and 2 from businesses): These respondents support qualified e-signatures (advanced e-signatures with a qualified certificate) as means for authentication and expression of consent. They come from DE, AT, EE, ES, PT and EU organisations. These respondents argue that qualified e-signatures "ensure a high degree of security in electronic communications (authenticity, integrity and completeness)". One respondent believes that qualified e-signatures should be accepted "for the sake of coherence with a recent decision taken in the framework of the implementation of the Services Directive". Several respondents acknowledge that cross-border recognition of e-signatures generated on the basis of certificates have proven to be a problem. "This could be solved easily by establishing mechanisms for federating validation authorities for electronic signatures..."

4) Not qualified e-signatures, 13% of respondents (6 replies: 4 from public authorities, 1 each from businesses and citizens categories): These respondents believe that qualified e-signatures should not be used in e-Procurement as "this is liable to raise unnecessary obstacles to cross border participation" or because these require too much time and effort. These respondents come from PL, SE, DE and AT.

5) Any solution as long as minimum requirements are met, 8% of respondents (4 respondents, 2 from public authorities, 1 each from businesses and citizens categories): 8% of respondents believe that any solution could be suitable for the authentication and identification of bidders. These respondents come from ES, HU and DE. However, these solutions should cover some basic requirements: they should allow identification and ensure confidentiality, security and integrity. They should also be compatible with several procurement platforms and not exclude tenderers from participating.

6) Login and password, 6% of respondents (3 replies, all from public authorities): These respondents believe that login and password/ self-registration are sufficient means for authentication and expression of consent. Two replies come from UK and one from FR. Advanced electronic signatures or digital certificates are considered disproportionate to the risks, as they have not recorded any instances of fraud or misrepresentation occurring when login and password were used. Qualified certificates are not necessarily needed to verify bidders' identity because where contract values or risks are high, the contracting authority will meet the tenderers and will verify the identity if necessary.

According to one respondent "Specific technologies should not be recommended to meet the legal requirements of authenticity of origin, because every business should be free to decide the type of technology needed to meet its specific risk level. Moreover, legislation cannot realistically change at the speed at which technology evolves." Another respondent believes that more process-oriented arrangements should be put in place, in addition to the technical solutions. They give as an example the Money Laundering Directive concerning how banks identify their customers. A similar approach could be used in e-Procurement by setting rules which govern the process but not the technology. Some believe that smart cards are the solution for identification.

4.3 *EU-wide e-Procurement standards*

The Green Paper (Question 12) asks what EU level standards are needed as a priority to support e-Procurement. About 80% of respondents answered this question (62 replies), with a clear preference to establishing EU level standards. Respondents have identified seven main areas where such standards are needed, which are in decreasing order of frequency: 1) standardising attestations and selection criteria; 2) standardising e-signatures; 3) standardising e-Procurement platforms; 4) using PEPPOL standards; 5) standardising product classification; 6) further developing e-Certis; and 7) using CEN standards (European Committee for Standardization).

1) Standardisation of attestations/documents and selection criteria (34% frequency) – see point 3.2: These respondents consider that tender documents, forms, required certificates or selection and exclusion criteria need to be standardised or harmonised across the EU. Some refer to the content of tender documents (CVs, references, solvency certificates, non bankruptcy, VAT clearance etc.); while others refer to their formats (cXML; PDF etc.). Several respondents believe that multilingual standard forms or standard forms in Commission's working languages should be used in cross-border procurement. There is some support for the creation of a registry for suppliers; while others suggest linking national databases containing information on the personal situation of economic operators.

2) Standardise e-Signatures (27% frequency) – see point 4.2: Several respondents call for the mutual recognition of e-signatures across the EU. Many recognise that "A common system of e-signatures across all Member States would be an advantage". The conditions for the use of e-signatures, especially in relation to security requirements could also be standardised. Others believe that the format of e-Signatures and time stamps should be standardised across the EU.

3) Standardise e-Procurement platforms (18% frequency): Ideas for standardisation of platforms range from standardising the platform interfaces to creating one single EU wide e-Procurement system. Several respondents believe that platforms should be interoperable, should allow exchange of data between themselves, should be web-based to avoid discrimination and that all publication texts should be available for consultation free of charge on all the platforms. Moreover, standards should be put in place to allow "easy and affordable

identification of companies and their representatives with pan-European validation elements to prevent the closure of domestic markets to companies from other nations." One respondent suggests that same icons should be placed in same places across platforms, to facilitate the submission of offers. Three respondents believe that e-Procurement platforms should be "certified" or "accredited" as compatible with EU or national legislation and with basic principles and concepts in e-Procurement systems. Three respondents believe that a single EU e-Procurement platform should be created to ensure standardisation. Such a solution could be open-source-compatible and used on voluntary basis.

4) PEPPOL Standards (16% frequency): Several respondents support the work carried out by PEPPOL or believe that PEPPOL standards could be used EU-wide. "At the moment, the outputs from the PEPPOL project are largely technical but as the pilot projects reach maturity, it is hoped that the practical implementation of PEPPOL standards will provide consistent processes and best practice..." According to another respondent, "the Commission should, however, maintain a certain amount of long-term thinking to guarantee that the results of the pilot tests are not wasted, particularly in relation to the European infrastructure produced by PEPPOL".

5) Standards for product classification (Frequency 11%): A couple of respondents suggest going beyond the CPV to create a common description of products which would encourage cross-border procurement. "An international standard to identify and describe a product is needed so that there is no misunderstanding between the public institution and tenderer about the product". Several respondents suggest that a standard for both classification and product description should be used, such as eCl@ss or UNSPSC. The EU should undertake mapping work between the different structures (i.e. CPV mapped to other classifications) and make this publicly available.

6) Develop e-Certis (Frequency 10%): Several respondents support the e-Certis initiative as it helps suppliers to compare the documents requested from them in different countries, and contracting authorities to compare mutually acceptable international requirements. Some believe that the disadvantage of e-Certis is that the equivalences that it establishes between documents from various countries are not legally binding. These documents cannot be relied on because if there is any lack of precision, no country would be legally responsible. Thus, some suggest that e-Certis should be expanded or made legally binding or that another equivalent system could be used.

7) CEN standards (Frequency 6%): Others suggest that CEN standards should be adopted EU-wide and CEN workshops should be encouraged. "Streamlined, flexible concepts, such as those developed by the EU expert group, should be worked out, together with industry, at CEN level, as has already been initiated".

Some respondents argue that standardising too far could kill innovation. They believe that standards could emerge from competition between e-Procurement platforms, as the most successful and cost-effective functionality. Setting-up and encouraging formal networks and living labs could be a pragmatic way to develop standards in the area of e-Procurement. Some also believe that EU standards should be developed within the international framework and that aligning vocabulary and semantics is a first step towards further standardisation.

4.4 *Open source solutions*

Almost 70% of respondents answered the question 13 on open source solutions in the Green Paper (53 replies). Of these 53 replies, 77% of respondents believe that the Commission

should encourage or increase the provision of open-source solutions for e-Procurement. All types of respondents support open-source solutions (public authorities, businesses, citizens and "others" categories). They believe that this can trigger efficiency gains for those contracting authorities which are developing e-Procurement capabilities or are developing maturity in platforms. Some believe that "open source software could help smaller (software) companies to gain access to this market" or that it could decrease the dependence on individual suppliers. Others perceive open source solutions as a means to increase the harmonisation of e-Procurement systems, especially if the Commission would adopt and promote one set of standards.

However many believe that these open-source solutions should be flexible and modular in order to be successful. Each module would provide minimum functionalities that can be built upon by any contracting authority to meet its specific needs. Furthermore, open source solutions should be designed to function on various operating systems (e.g. OS Mac).

Some believe that encouraging open source solutions could increase the number of technical solutions available, which would amplify the technical fragmentation of the market. They believe that the Commission should encourage the provision of existing open source solutions but should not develop any new ones and should justify why a particular open source solution is encouraged. Almost 20% of respondents believe that the Commission should not encourage open-source solutions as the market should ultimately decide which solutions are suitable.

4.5 *Commission's solutions*

Question 14 asks whether the Commission should continue to make its own e-Procurement solutions (e.g. building on open source e-Prior) available to the wider public. 68% of respondents answered this question (52 replies). Of these 52 replies, almost 90% favour such measures. Many believe that this could reduce investment costs for contracting authorities which are building such solutions from scratch. Some believe that the Commission should include such activities in the framework of a total plan, comprehensively expressing the final policies and goals that are to be pursued. The Commission should not only make its solutions available to the Member States but it should also share its own experience in using them and should promote these tools. Some believe that such solutions should only be made available if they do not already exist on the market.

Several respondents believe that the Commission "should provide guidance on the real costs of using open source software and on the pre-conditions in regard to in-house competence and technical knowhow needed." Several respondents suggest that the efficiency of these tools should be evaluated before making them available to the wider public.

10% of respondents believe that the Commission should not make its own e-Procurement solutions available. Many solutions already exist, in all price ranges, these should not be reinvented. According to one respondent, "legal certainty could no longer be guaranteed from the time of provision as almost anybody (even people who are less well-versed in procurement) could take these [Commission] solutions and programme them further".