




products from third countries

**Ensuring fair competition against the background
of sustainable and responsible procurement
of goods and services**



The EU is strengthening its supply chains and promoting fair competition.

The European Union is faced with the urgent task of strengthening its supply chains and ensuring security of supply for its member states. Promoting European production and implementing local sourcing within a circular economy can be key strategies to reduce dependence on supplies from third countries. Instruments such as the Carbon Border Adjustment Mechanism (CBAM) are also intended to help create fair competition conditions and promote environmentally friendly production standards. However, there are significant limits to the implementation of these measures.

While the EU has largely opened its public procurement markets to companies from third countries, many of these countries do not grant European companies comparable access or they are all too often excluded from these foreign markets.

What is largely unknown is that EU contracting authorities in the water, energy and transport sectors, when calling for tenders for the supply of products under EU Directive 2014/25/EU [1], have the possibility to reject tenders from non-EU countries if the share of goods originating from non-EU countries exceeds 50%, or to give preference to the EU tender if the prices are equivalent (i.e. within a margin of 3%).



Implementation of EU Directive 2014/25/EC into national law of the Member States

This practice is established by the implementation of EU Directive 2014/25/EC [1] into the national law of all Member States. The EU Directive was implemented, among other things,



in **Germany**: § 55 of the sectoral regulations (SektVO) [2],



in **Austria**: § 303 BVerfG (Federal law on the awarding of contracts) [3],



in **France**: L.2153-1 et seq. of the French Code on public procurement,



in **Belgium**: art.154 – Loi du 17 JUIN 2016 relative aux marchés publics,



in **Luxembourg**: art. 147 – Loi du 8 avril 2018 sur les marchés publics,



in the **Netherlands**: art. 3.76 – Aanbestedingswet 2012 – Geldend van 18-04-2019 t/m heden ,



in **Italy**: Art 137, CODICE DEI CONTRATTI PUBBLICI Decree legislative April 18, 2016, n. 50,



in **Spain**: : art. 70 “Preference for community offers in supply contracts”, Royal Decree-Law 3/2020, on February 4, 2020*

* On June 28, 2021, this Royal Decree-Law was incorporated into the “Public Sector Contracts Code”, along with the rest of the EU directives and legislation related to public

Contracting authorities may reject non-EU tenders if more than 50% of the goods originate from third countries.



Public authorities must ensure fair competition through responsible purchasing, particularly in the water sector.

Public contracting authorities are encouraged to contribute to ensuring and maintaining fair competition through responsible purchasing, particularly for essential services such as the water sector.

However, fair competition can only take place if all market participants adhere to the legal rules:

In November 2023, the European Commission identified the ductile iron pipe sector as a sector to be protected by publishing Implementing Regulation 2023/2605 [4]. In this context, the Commission found that an Indian manufacturer of these products had provided false weight information when importing its products into the EU. In order to reduce the dumping margin, the weight information was declared up to 15% lower. As a result, the manufacturer was immediately charged a total customs duty of 16%, i.e. tax fraud was obviously committed at the expense of European states. This made it possible to fraudulently reduce prices in order to gain a competitive advantage over European manufacturers.

Against this background, public clients in the water supply sector in particular have a special obligation towards the population: sustainable and responsible procurement of goods and services taking economic, ecological and social aspects into account.

As the cornerstone of a healthy market economy, fair competition plays a crucial role in today's competitive world. Only fair competition ensures a level playing field for companies, promotes innovation and efficiency and, last but not least, strengthens consumer confidence in manufacturers and utilities.

In addition, the member companies of EADIPS stand for high European quality, economical and resource-saving production of their products as well as high standards in working and production conditions and in their supply chains.



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Regulatory measures for awarding and combating trade fraud in the EU

[1] Regulation on the award of public contracts in the field of transport, drinking water supply and energy supply (Regulation sector - SektVO). Regulation Sector of 12 April 2016 (Federal Law Gazette I p. 624, 657), last amended by Article 6 of the Act of 12 November 2020 (Federal Law Gazette I p. 2392).

[2] Regulation on the award of public contracts in the field of transport, drinking water supply and energy supply (Regulation sector- SektVO). Regulation sector of 12 April 2016 (Federal Law Gazette I p. 624, 657), last amended by Article 3 of the Regulation of 7 February 2024 (Federal Law Gazette 2024 I No. 39).

[3] Federal Law on the Award of Contracts (Federal Procurement Act 2018 - BVergG 2018)

[4] Commission Implementing Regulation (EU) 2023/2605 of 22 November 2023 amending Implementing Regulation (EU) 2022/926 imposing a definitive anti-dumping duty on imports of pipes and tubes of ductile cast iron (also known as spheroidal graphite cast iron) originating in India following a partial interim review pursuant to Article 11(3) of Regulation (EU) 2016/1036 of the European Parliament and of the Council