



ESMIG position

ESMIG position paper on fair competition

Open markets and free competition are indispensable pillars for innovation, technology development and a well-functioning economy. However, European companies are increasingly facing unfair competition from third country producers having access to the EU's internal market. As stressed in the Draghi report on EU competitiveness¹, fair competition is one of the key pillars for European competitiveness and must be addressed.

ESMIG's members, European smart energy solution providers, are directly confronted with this situation in the specific context of public procurements for the national rollouts of smart metering solutions in the EU. This situation also afflicts, therefore, many other EU companies in the sector, including suppliers, sub-contractors, and co-developers, ranging from SMEs to large companies.

ESMIG's members provide products and services for critical infrastructure. Risks of unfair competition are closely connected with the safety of the electricity and gas grids, privacy, and data security of Europe's citizens. At the same time, these technologies are essential for enabling the green and digital energy transition.

Energy management relies on the critical infrastructure in every Member State and in the European Union as a whole. This digitalised infrastructure manages energy data which is sensitive information. Considering the long-term duration of smart energy products and solutions (the lifecycle of smart meters is typically 15-20 years), critical infrastructure is being put at risk in the long run if vendor compliance and security is not properly considered. Urgent measures are needed to address this key issue for the European Union's political and strategical independence.

In particular, actions should be taken to strengthen cybersecurity, contract award criteria, address non-compliance with EU rules and standards, tackle abnormally low tenders, and be stricter in terms of buyer accountability.

¹ https://commission.europa.eu/topics/eu-competitiveness/draghi-report_en

Notification of foreign subsidies

The Foreign Subsidies Regulation² introduces a mechanism of prior notification of foreign financial contributions in the context of public procurement procedures whereby bidders must notify the contracting authority, or the contracting entity, of foreign financial contributions received in the last three years. However, almost all public procurements for the national rollouts of smart metering solutions in the EU are below the €250 million thresholds mandated in the Regulation. Indeed, ESMIG member's utility customers tend to divide the bids between multiple technology suppliers to mitigate their own risk, which leads to contracts far below this amount.

The Regulation must be fit for purpose and guarantee a level playing field in the internal market for industries which are indispensable to foster the EU's strategic autonomy and secure EU critical infrastructure. Thus, the threshold should be lowered to €30 million for critical infrastructure in the context of public procurement procedures (Art. 28)

We urge the Commission to amend the threshold in the context of the review mandated by article 52 of the Regulation which gives the possibility to the Commission to establish specific thresholds for notifications for certain economic sectors or differentiated thresholds for different types of public procurement contracts, especially where the practice of the Commission enables the identification of economic activities where foreign subsidies are more likely to distort the internal market, including as regards strategic sectors and critical infrastructure.

Abnormally low prices

Bidding candidates should have the possibility to notify the authority in case of suspicion of abnormally low prices. In this context, abnormally low tenders should be addressed. This term should be clearly defined and the obligations of contracting authorities to check the justifications for low price should be strengthened.

For a matter of transparency, the final price of winning tenders should be publicly released.

Non-price criteria

For a competitive and sustainable European smart energy supply chain, strong non-price criteria should become the norm in tenders for critical infrastructure to avoid potential risks of dependencies and vulnerabilities. The weight and importance for non-price criteria, such as a high level of sustainability, social accountability (ESG criteria) and cybersecurity, in the evaluation of the tenders in critical energy infrastructure must be strengthened:

- **Sustainability:** Requirements within public procurement should not only be about meeting minimum standards but be forward-looking, encouraging higher standards towards meeting all Green Deal objectives. Reporting must be validated by an EU independent third party.
- **Workers' rights:** Labour standards and related legislation are at the highest level in the EU, with continuous improvements. Thus, this is of equal importance when overseeing non-EU country

² <https://eur-lex.europa.eu/eli/reg/2022/2560/oj>

competition. Low prices are often achieved as a result of lower labour standards and a disregard for the welfare of employees.

- **Supply chain:** The Net-Zero Industry Act³ must fully apply to the smart metering sector. For public procurement, the resilience criterion, which requires public buyers to diversify supply sources in cases of high dependency, must be a minimum mandatory requirement.
- **Cybersecurity:** Smart meters control the flow of energy throughout Europe. As they are connected and can be remotely controlled, malicious access to the system can risk the safety of the electricity grid and critical infrastructure. Thus, cybersecurity is of paramount importance. Therefore, new regulations should take into account the possibility of identifying and assessing high risk suppliers.

In the context of the upcoming review of the Public Procurement Directives, we urge the European Institutions to ensure that all suppliers must comply with the highest level of European standards including, but not limited to, human rights, fundamental workers' rights and environmental protection with adequate compliance management systems. Cybersecurity is now essential for EU growth and future and should be a key criterion of all tenders in critical infrastructure.

In the context of growing protectionism in other world regions, the European Union needs to review and adapt its competition and trade policies, taking bold actions to ensure a fair level playing field for EU and non-EU competitors in the internal market

The distortion of competition in the Single Market to the detriment of innovative European companies in strategically important sectors, is potentially putting cybersecurity at risk in critical infrastructures as well as inflicting negative environmental and social impacts.

In addition, reciprocity of rules must apply with third countries in which European companies cannot compete on equal terms with home companies which are protected or subsidised by their respective national governments.

About ESMIG

ESMIG is the European voice of the providers of smart energy solutions. Our members provide products, information technology and services for multi-commodity metering, display and management of energy consumption and production at consumer premises.

Our activities are focused on systems for smart metering, consumer energy management and safe and secure data transfer. We work closely with EU policy makers and other EU associations to make Europe's energy and water systems cleaner, reliable, more efficient and the European consumer informed, empowered and engaged.

This work is licensed by ESMIG under [CC BY-NC-SA 4.0](#). For more information read our [Terms of Use](#).

³ https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=OJ:L_202401735