



# Position Paper

## Fair Competition in the Energy Sector

**ESMIG members strongly defend open markets and free competition as indispensable pillars for innovation, technology development and a well-functioning economy. However, competition needs to be fair and transparent and should take into consideration the specificities of strategically important infrastructures.**

### **Situation and Challenge**

European companies are increasingly facing unfair competition from third country producers in the EU market.

In particular, and as recognised by the European Commission<sup>1</sup>, subsidies granted by non-EU governments to companies competing in the Single Market can have an increasingly negative impact on competition. In the absence of a true international level playing field, third country producers who are subsidised by their governments and are successfully entering the EU market, can afford to compete with low prices against European companies that are subject to EU State aid control.

**These practices are not fair. They distort competition and undermine the principles that the Single Market is built upon.**

In the specific context of public procurements for the national rollouts and solutions of smart meters, in some Member States, subsidised products from non-European countries are preferred to European products as a result of their lower prices. Foreign subsidies may enable bidders to gain an unfair advantage by, for example, submitting bids below market price or even below hardware cost. This in turn allows them to obtain public procurement contracts that they would otherwise not have obtained.

This is not being sanctioned by the market, nor by the regulators, and legal action entails a very long, complex, and costly process for the European companies.

Public procurement contracts awarded in our sector indicate that this is not only a risk but is already taking place, directly impacting European companies, and triggering a series of negative effects. As a consequence of the current economic crisis, investors may

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<sup>1</sup> European Commission [White Paper on Foreign subsidies](#), June 2020

increasingly look to lower costs on the infrastructure and thus encourage this practice which could eventually become the “new normal”.

These advantages can also result from national laws in third countries which have poorer social labour and environmental standards.

## Consequences and risks we want to avoid

The opaque and unregulated practices described above ultimately cause a series of risks. The EU has already in the past experienced the negative consequences when the price becomes the only strategy for making decisions, or better said, when there is no strategy.

1. **Safety of mission critical infrastructure:** 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 mission critical infrastructure. Of particular importance is the Head-End-System at the backend and the communication technology used in smart meters. This is the single-entry point of possible remote attacks on smart meters.
2. **Data security and sovereignty:** The success of smart metering roll outs depends on the quality of the data generated and transmitted. Compromises to the security of this data can impact privacy and safety of European citizens. Hence, implementing steps in the supply chain to guarantee data security and sovereignty – on the meter, in transit and when stored on the back-end, are essential.
3. **Risk of compromising Europe’s strategic autonomy:** depending on non-EU technology and solution providers can have serious consequences for the complex value chain in our sector. Communication technology is essential for smart metering and the energy transition success and is also at the heart of geo-political tensions. Europe needs to adopt policies that mitigate the risk linked to communication technology supply chains and security.
4. **Risk of losing global leadership in energy infrastructure and smart energy solutions:** Europe is a world-wide leader and standard setter in an innovative industry which is a key enabler for the cost-efficient dual green and digital transformation.
5. **Risk of technology deficit:** with certain industries leaving the EU, Europe will become completely dependent on third countries.
6. **Risk of unemployment:** due to similar situations mentioned above, many industries were wiped from the EU economy, causing unemployment. This is a major concern in relation to post-corona economic recovery.
7. **Risk of deploying products and solutions of poorer-quality and with lower environmental standards:** The EU industry has taken important steps to align with the objectives of the green transition and decarbonisation. We are fulfilling all the given challenges of implementing circular economy, and in the end being defeated at public procurement tenders by producers who have not implemented high environmental

standards or low carbon strategies. In addition to this, carrying out cross-globe logistics leads to a higher CO2 footprint contradicting the goals set out for decarbonisation.

8. **Risk of deploying products and solutions manufactured with poorer social and labour standards:** labour standards and related legislation is at the highest level in the EU, with continuous improvements. Therefore, we think this is of equal importance when overseeing non-EU country competition. Low prices are often achieved as a result of lower labour standards and a disregard for the welfare of employees.
9. **Risk of dependence:** Lessons we all have learned from the COVID-19 crisis are to be resilient and strategically independent. This means implementing shorter supply chains and driving towards carbon neutral technology and practices, thus resulting in a stronger European economy.

## Proposal for the way forward

**ESMIG sees an urgent need to act on foreign subsidies in the energy sector,** particularly in the context of public procurements. The European Commission should introduce mechanisms whereby bidders would have to notify the contracting authority of financial contributions received from non-EU countries. There is a need to introduce fairness and transparency in all competition at EU level, in particular non-EU competitors competing within public procurement in the EU.

**ESMIG sees an urgent need to legislate and reinforce high-level standards and level out all competitors on:**

1. **Safety of mission critical infrastructure:** EU energy management is already dependent on third countries due to the sourcing of energy. In addition, the infrastructure to distribute and consume this energy is equally important and cannot be risked. Europe cannot afford the risks involved in taking backdoors that may bring down energy grids, and with it, other associated critical infrastructure. At the same time, these technologies are essential for enabling the energy transition. Hence, Europe should have adequate mechanisms in place to ensure that no outside actor can manipulate European infrastructure through technology or financial aspects that seemingly make it cheaper to use but could have drastic long-term consequences.
2. **Data and privacy:** achieving the energy transition and digitalisation while maintaining the privacy and data security of Europe's citizens is essential. This involves using existing laws and technology, while also certifying the supply chain for these technologies, to ensure that no external actor can manipulate it in compromising European rights and laws.
3. **Corporate social responsibility:** we call for decent labour standards that are required from all businesses competing within Europe. Development of EU strategic

infrastructure, or any other sector should not be developed at the cost of social inequality around the globe.

4. **Environmental requirements:** our products and services contribute to achieving the Green Deal goals through energy efficiency impact. At the same time, the EU industry is committed to ensuring that products and solutions meet the highest environmental standards; in particular, circular economy principles, life cycle optimisation and carbon footprint minimisation. Every product and service has its environmental lifecycle and social footprint and this has to be calculated into EU emissions and put forward as a transparent benchmark within public procurement. 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.
5. **Ensure accountability of the buyers:** our customers are often state-owned companies who are therefore co-responsible for achieving the Green Deal climate and strategy goals. To achieve successful green and digital energy transition, which at the same time will meet climate goals and strengthen EU economy, it is necessary to enforce transparent and fair competition through supply chains. This means fully integrating the above-mentioned sustainability requirements, jointly contributing to decarbonisation.

**In essence, ESMIG is proposing that we make sure competition rules ensure a fair level playing field for EU and non-EU competitors. The absence of this level playing field is distorting competition in the single market to the detriment of innovative European companies in strategically important sectors, as well as inflicting negative environmental and social impact.**

**In the context of growing protectionism in other world regions, Europe needs to review and adapt its trade policy, taking bold actions to tackle the negative implications resulting from foreign subsidies.**

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## About ESMIG

ESMIG is the voice of smart energy solution providers, representing 25 European companies ranging from SMEs to multinational companies.

Our members provide products, information technology and services for multi-commodity metering and for the display and management of energy consumption and production at consumer premises, making energy cleaner, more affordable and more reliable.

For more information about ESMIG, please visit [www.esmig.eu](http://www.esmig.eu)