

Directive 2014/25/EU of the European Parliament and of the Council of 26 February 2014 on procurement by entities operating in the water, energy, transport and postal services sectors and repealing Directive 2004/17/EC (Text with EEA relevance)

TITLE II

RULES APPLICABLE TO CONTRACTS

CHAPTER III

Conduct of the procedure

Section 4

Tenders comprising products originating in third countries and relations with those countries

Article 85

Tenders comprising products originating in third countries

1 This Article shall apply to tenders covering products originating in third countries with which the Union has not concluded, whether multilaterally or bilaterally, an agreement ensuring comparable and effective access for Union undertakings to the markets of those third countries. It shall be without prejudice to the obligations of the Union or its Member States in respect of third countries.

2 Any tender submitted for the award of a supply contract may be rejected where the proportion of the products originating in third countries, as determined in accordance with Regulation (EU) No 952/2013 of the European Parliament and of the Council⁽¹⁾, exceeds 50 % of the total value of the products constituting the tender.

For the purposes of this Article, software used in telecommunications network equipment shall be regarded as products.

3 Subject to the second subparagraph of this paragraph, where two or more tenders are equivalent in the light of the contract award criteria defined in Article 82, preference shall be given to those tenders which may not be rejected pursuant to paragraph 2 of this Article. The prices of those tenders shall be considered equivalent for the purposes of this Article, if the price difference does not exceed 3 %.

However, a tender shall not be preferred to another pursuant to the first subparagraph where its acceptance would oblige the contracting entity to acquire equipment having technical characteristics different from those of existing equipment, resulting in incompatibility, technical difficulties in operation and maintenance, or disproportionate costs.

4 For the purposes of this Article, those third countries to which the benefit of this Directive has been extended by a Council Decision in accordance with paragraph 1 shall not

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be taken into account for determining the proportion, referred to in paragraph 2, of products originating in third countries.

5 By 31 December 2015 and every year thereafter, the Commission shall submit an annual report to the Council, on progress made in multilateral or bilateral negotiations regarding access for Union undertakings to the markets of third countries in the fields covered by this Directive, on any result which such negotiations may have achieved, and on the implementation in practice of all the agreements which have been concluded.

- (1) Regulation (EU) No 952/2013 of the European Parliament and of the Council of 9 October 2013 laying down the Union Customs Code ([OJ L 269, 10.10.2013, p. 1](#)).