



EUDA MEMO ON HOW TO IMPLEMENT ‘EUROPEAN PREFERENCE’ IN EU PUBLIC PROCUREMENT

1. Background

To address the significant resurgence of unfair practices in global competition and as they are reviewing their public procurement legislation, EU authorities are considering the introduction of a “**European Preference**” within public procurement procedures in the Single European Market.

Although it may appear straightforward, the products and services provided in the European market inherently result from the integration of components sourced from the global supply chain. This gives rise to the question of how the threshold for “European content” should be defined in the context of implementing a *European Preference*, and which objective criteria should apply to determine it.

EuDA reflected on the concept of a *European Preference* and examined how it may best apply to the dredging and marine construction services as well as the potential benefits for the industry and its clients.

The main conclusions of this exercise are synthesised in this memo, which outlines a practical approach to introducing a “European Preference” in EU public procurement, with a focus on strengthening European economic benefits and protecting strategic sectors such as the dredging and marine construction services.

It further proposes objective criteria, including ‘EU origin’, EU-based headquarters and decision-making, and European ownership of key assets to assess the European character of economic operators, while also briefly addressing the application of European Preference in EU-funded projects outside the European Union.

For the purposes of strategic, critical or defence-related services, the definition of “EU”, “Europe” and “European” shall be limited to the Member States of the European Union, the EEA, EFTA, the United Kingdom and Ukraine.

2. Dredging Services are of strategic importance

By adopting Directive (EU) 2022/2557 of the European Parliament and of the Council of 14 December 2022 on the resilience of critical entities (the “**Directive on the Resilience of Critical Entities**”) the EU recognised that critical infrastructure and the critical entities operating that infrastructure are vital for modern societies. For this reason, the EU has long been engaged in supporting their protection and resilience against natural and man-made risks (including intentional harm).

The services provided by dredging companies are key for the maintenance, construction and protection of critical infrastructures and essential services, as defined in the Directive on the Resilience of Critical Entities. Dredging and

marine construction services are key to enable EU strategic assets, that are critical for:

- **Transport**: dredging and marine construction services are key to enable the maintenance, construction and protection of EU strategic assets such as **maritime and inland transport infrastructure**, including ports, which are **crucial for the competitiveness of the entire EU economy**, for strategic autonomy, for promoting economic development and territorial and social cohesion;

Ultimately, the capability of an EU Member State to construct, protect and maintain its ports and maritime infrastructure is crucial for ensuring its preparedness for a possible military conflict. Moreover, these ports and maritime infrastructure are often the entrance gates for non-EU countries and therefore susceptible to unlawful and illegal attacks to the safety and security of the European Union.

- **Energy**: dredging companies carry out **offshore energy infrastructure projects** that make crucial contributions to Europe's climate change targets and that become increasingly important from a geopolitical perspective, especially as the EU seeks to achieve its strategic autonomy and reduce its energy dependence on third countries;
- **Telecommunications**: dredging and marine construction services also play a significant role in **telecommunications infrastructure**, by installing, repairing and protecting subsea cables, which are increasingly security sensitive (recent cases of **subsea cables** sabotages in the Baltic Sea). The EU has also set the goal of making Europe the most connected continent by 2030. Achieving this goal will require significant investment in telecommunications infrastructure. For such strategic projects, European policy should require preferential treatment of European companies in public tenders;
- **Coastal protection**: dredging and marine construction services enable the implementation of key EU policies, including the Green Deal, by building defences against sea level rise, coastal protection against storms and floods as well as by restoring marine habitats.

Therefore, EuDA recommends that **European dredging companies should be recognised as strategic** by the European Commission and be subject to European Preference treatment in public procurement, thereby ensuring that the EU's strategic infrastructure and essential services are adequately protected.

3. How to define EU preference?

EU Preference should be granted to economic operators having EU substance in the particular activity.

For dredging and marine construction services, the substance could be defined at 3 levels:

1. EU ownership
2. EU decision making
3. EU owned technical and professional abilities.

Where an economic operator participates in a procurement procedure as part of a group of economic operators, including temporary associations of undertakings, consortia, unincorporated joint ventures or similar arrangements, each constituent member of such grouping should independently satisfy the applicable EU Preference criterion mentioned below.

3.1. EU Ownership and Control

A primary criterion for determining whether a company should be regarded as an EU company could be the location of its ultimate ownership and control, in particular whether effective control ultimately rests within the European Union ('EU origin').

The concept of 'EU origin' is already mentioned in article 11 of the proposed **European Industrial Accelerator Act** (COD/2026/0068):

"Contracting authorities and contracting entities shall exclude from access to procurement procedures referred to in Part I of Annex II and Part I of Annex III tenders submitted by economic operators owned or controlled by an entity established in third countries which have not concluded an international agreement with the Union guaranteeing such access."

This definition, aligned with the 2019 EU guidance on Public Procurement, duly takes into account and fully respects the European Union's international commitments, notably under the WTO Government Procurement Agreement (GPA) and applicable free trade agreements (i.e. free trade agreements in relation to the tendered services).

The existence of control and ownership may be assessed by reference to the tools and criteria developed under the EU sanctions framework, as reflected in the EU Sanctions Helpdesk guidance.

As a conclusion, requiring '**EU origin**' could be an important criterion for determining *European Preference* in public tenders in Europe.

3.2. EU decision making: Headquarters (HQs) in Europe

In strategic sectors, such as dredging, it is essential that decision-making is aligned with European interests. This can be achieved by incorporating EU-based decision-making criteria into the European Preference framework, alongside considerations of "EU origin".

When a company's HQ is situated in Europe, the **professional and technical capability** (including knowledge, know-how and equipment) are likewise anchored in Europe and are more likely to be maintained and further developed within Europe, thereby constituting an essential asset for Europe and therefore an important tool for determining European Preference.

A central aspect of the discussion relates to the criteria for assessing whether a company's HQ can be considered as being established in Europe.

The determination of a company's HQ should not be based solely on its place of incorporation but must reflect its place of **effective management and control**. Relevant factors include the location of executive management structures, the exercise of strategic decision-making, the degree of control

exercised by ultimate beneficial owners, and the presence of substantive economic activities and operational capabilities within the relevant jurisdiction.

Where strategic decision-making is effectively exercised outside Europe, questions arise as to the extent to which such decisions genuinely reflect European interests. For the headquarters criterion to be meaningful, it is essential that substantive decision-making functions are carried out at the European HQ.

A similar definition was used in article 16.3 of Council Regulation (EU) 2025/1106 of 27 May 2025 establishing the Security Action for Europe (SAFE) through the Reinforcement of the European Defence Industry Instrument:

“Contractors and subcontractors involved in the common procurement shall be established and have their executive management structures in the Union, in an EEA EFTA State or in Ukraine. They shall not be subject to control by a third country which is not an EEA EFTA State or Ukraine or by another third-country entity which is not established in the Union, in an EEA EFTA State or in Ukraine”

As a conclusion, requiring HQs in Europe could be a relevant criterion for assessing the European identity of a company.

3.3. European Ownership of technical and professional abilities

3.3.1. EU owned equipment

While equipment ownership can constitute an essential requirement in public tenders, the globalised nature of supply chains means that sourcing components exclusively from Europe can be challenging.

The construction of dredging and marine construction vessels illustrates the inherently global nature of the maritime supply chain. A dredging or marine construction vessel is not a purely domestic product but rather the result of a complex integration of components, materials and technologies sourced from multiple jurisdictions. Key elements such as steel structures, propulsion systems, dredge pumps, hydraulic equipment, automation systems and specialised dredging and marine construction components are often subject to patents and procured from a wide range of international suppliers and subsequently assembled at shipyards.

As a result, even when the final assembly or the shipyard is located within Europe, the underlying value chain remains deeply international, making it challenging to attribute the economic origin of a dredging or marine construction vessel to a single jurisdiction.

In this context, requiring European ownership of such assets may be more appropriate and relevant than imposing strict requirements as to their place of manufacture.

EU ownership of dredging and marine construction equipment in tenders also ensures a strategic fleet of dredgers remain under European jurisdictions.

As a conclusion, requiring **European ownership of key equipment** could be a relevant criterion for establishing “European preference” in public tenders in Europe.

3.3.2. *European Flag and Crew*

A further aspect to be considered is the flagging of vessels and the composition of crews.

Requiring a European flag and crew may be justified, as it ensures compliance with higher European standards particularly in relation to environmental protection, safety, working conditions, remuneration and social security.

In addition, it ensures a strategic minimum of seafaring and dredging and marine construction know-how and capabilities remain within the European Union and do not end up being fully outsourced in the longer term. In many European Member States, European Flag and European crew are already applied in public procurement as part of the tender requirements.

As a conclusion, requiring **European Flag and European crew** could be additional criteria determining *European Preference* in public tenders in Europe.

4. **Outside Europe**

Finally, it is also important to implement a *European Preference* to all EU funded projects outside the EU. These projects should include similar requirements while remaining practical and realistic, such as: HQs located in Europe, European flagged vessels, (effectively enforced) European standards for the project (environment, safety, security, working conditions, ...). An all-EU crew would not be realistic (e.g. shortage of EU seafarers).

As a conclusion, *European Preference* outside the EU should be adapted to still benefit Europe but should consider practical constraints of working outside of the EU.