

EN
P-004427/2021
Answer given by Mr Breton
on behalf of the European Commission
(8.11.2021)

Pursuant to Article 57(2) of Public Procurement Directive 2014/24/EU¹, contracting authorities may exclude or may be required by Member States to exclude from participation in a procurement procedure an economic operator in breach of its obligations relating to the payment of taxes. Where such a breach has been established by a final and binding administrative or judicial decision, the exclusion is mandatory.

Being established in an offshore jurisdiction or having a part of the share capital owned by an offshore company is however not explicitly covered by the existing exclusion grounds as listed in Article 57 of Directive 2014/24/EU.

Within the Public Procurement framework and according to the Court's case law in this area², Member States remain free to adopt substantive public procurement provisions, which aim to ensure the observance of the principles of equal treatment and transparency. Denmark could introduce such provisions. At the same time, no automatic exclusion from tenders of an entire category of economic operators should be introduced.

¹ <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32014L0024&from=en>

² Judgment of the Court of 16 December 2008, in case C-213/07, *Michaniki*, § 44, 48 and 60 to 62.