

Trade Secrets as an Exception from Procurement Transparency: A Comparative Analysis of EU Law and Practice

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Abstract: This paper examines the complex interplay between the protection of trade secrets and the principle of transparency in EU public procurement. It analyzes the core framework established by Article 21 of Directive 2014/24/EU, highlighting the challenges of balancing confidentiality needs with transparency obligations. The ambiguity surrounding the definition of "confidential information" is discussed, along with the potential for unilateral designation by economic operators and the varying levels of protection afforded across Member States due to the influence of national laws. The presentation explores the competing disclosure obligations stemming from Articles 50 and 55, and emphasizes the need for coordinated interpretation to avoid conflict. Key case law from the CJEU (C-450/06 Varec, C-927/2019, C-54/2021) is analyzed to illustrate the practical application and interpretation of these provisions. Furthermore, the paper incorporates best practices and recommendations from ANAP Romania, detailing criteria for objective analysis of confidentiality declarations and the types of information that may be legitimately declared confidential in tenders (personal data, trade secrets, intellectual property). Finally, a comparative overview of approaches to transparency in various EU Member States reveals significant differences in practice, highlighting potential abuses of confidentiality rules and the need for greater harmonization to ensure a level playing field within the EU procurement market.