

ANNEX I

**INFORMATION TO BE PROVIDED IN REQUESTS CONCERNING
THE APPLICABILITY OF ARTICLE 34 OF DIRECTIVE 2014/25/EU****1. Section 1 — Identity and status of applicant**

Article 35 of Directive 2014/25/EU provides that requests concerning the applicability of Article 34 are to be made by the Member States or, when the legislation of the Member State concerned provides for it, by the contracting entities. Depending on the case, the term ‘applicant’ may refer therefore to either the Member State or the contracting entities. It is used merely in the interest of simplification.

1.1. Full name and address of the applicant:

In the event that the activity covered by this request is carried out by undertakings affiliated⁽¹⁾ to the applicant, the term ‘applicant’ will be deemed to refer to both the entity indicated in point 1.1 and the affiliated undertakings in question. Thus, in particular for sections 5 and 6 below, it will be necessary to supply the requisite information for the ‘applicant’ as thus defined.

1.2. Status of the applicant: contracting authority⁽²⁾, public undertaking⁽³⁾ or private undertaking?**1.3. For a contracting authority: are you making the request for and on behalf of your Member State?**

If so, please supply the information requested for each point in sections 2 to 6 inclusive. With regard to each point in sections 5 and 6 in particular, please provide the requisite information for each of the entities carrying out the activity covered by this request. However, where there are a large number of such entities, the information may be restricted to those entities holding 10 % or more of the geographical market in question⁽⁴⁾. Where the information is similar or identical for several entities, they may be grouped together, on condition that this is specified.

1.4. For contracting entities (the contracting authorities, the public undertakings and the private undertakings carrying out one of the activities referred to in Directive 2014/25/EU⁽⁵⁾): Please state the provision of national law stating that contracting entities may submit a request under Article 35.

Changes to legislation: There are currently no known outstanding effects for the Commission Implementing Decision (EU) 2016/1804, Division 1.. (See end of Document for details)

- (1) Within the meaning of Article 29(1) of Directive 2014/25/EU, “affiliated undertaking” means any undertaking the annual accounts of which are consolidated with those of the contracting entity in accordance with the requirements of the Directive 2013/34/EU of the European Parliament and of the Council of 26 June 2013 on the annual financial statements, consolidated financial statements and related reports of certain types of undertakings, amending Directive 2006/43/EC of the European Parliament and of the Council and repealing Council Directives 78/660/EEC and 83/349/EEC (OJ L 182, 29.6.2013, p. 19). Article 29(2) adds that ‘in the case of entities, which are not subject to Directive 2013/34/EU, “affiliated undertaking” shall mean any undertaking that:
- (a) may be, directly or indirectly, subject to a dominant influence by the contracting entity;
 - (b) may exercise a dominant influence over the contracting entity; or
 - (c) in common with the contracting entity, is subject to the dominant influence of another undertaking by virtue of ownership, financial participation, or the rules which govern it.’
- (2) According to Article 3 of Directive 2014/25/EU, “contracting authorities” means State, regional or local authorities, bodies governed by public law or associations formed by one or more such authorities or one or more such bodies governed by public law.
“Bodies governed by public law” means bodies that have all of the following characteristics:
- (a) they are established for the specific purpose of meeting needs in the general interest, not having an industrial or commercial character;
 - (b) they have legal personality; and
 - (c) they are financed, for the most part, by the State, regional or local authorities, or by other bodies governed by public law; or are subject to management supervision by those authorities or bodies; or which have an administrative, managerial or supervisory board, more than half of whose members are appointed by the State, regional or local authorities, or by other bodies governed by public law.’
- (3) According to Article 4(2) of Directive 2014/25/EU, “Public undertaking” means any undertaking over which the contracting authorities may exercise directly or indirectly a dominant influence by virtue of their ownership of it, their financial participation therein, or the rules which govern it. A dominant influence on the part of the contracting authorities shall be presumed in any of the following cases in which those authorities, directly or indirectly:
- (a) hold the majority of the undertaking's subscribed capital;
 - (b) control the majority of the votes attaching to shares issued by the undertaking,
 - (c) can appoint more than half of the undertaking's administrative, management or supervisory body’.
- (4) See section 3.
- (5) The relevant activities or sectors may be summed up as follows:
electricity (production, transmission, distribution); gas (production, transport, distribution); heat (production, transport, distribution); hydrocarbons (extraction); coal and other solid fuels (exploration and extraction); drinking water (production, transport, distribution); urban transport (bus, underground etc.); railways (transport of persons and goods; making infrastructure available and management/operation of actual transport services); ports (seaports or inland ports, infrastructure to be made available and management/operation of the infrastructure); airports (making infrastructure available and management/operation of the infrastructure); and postal services. For an exact definition of the activities covered, see Articles 7 to 14 of Directive 2014/25/EU.

Changes to legislation:

There are currently no known outstanding effects for the Commission Implementing Decision (EU) 2016/1804, Division 1..