

ANNEX II

**INFORMATION TO BE CONTAINED IN NOTICES OF REQUESTS CONCERNING
THE APPLICABILITY OF ARTICLE 34 OF DIRECTIVE 2014/25/EU****A. Access to the market is deemed not to be restricted in accordance with the first subparagraph of Article 34(3) of Directive 2014/25/EU**

Request [from a Member State/made by a contracting entity⁽¹⁾]

On [...] the Commission received a request pursuant to Article 35 of Directive 2014/25/EU of the European Parliament and of the Council⁽²⁾. The first working day following receipt of the request is [...].

This request, made by [name of the Member State concerned/name of the relevant contracting entity]⁽³⁾, concerns [brief mention of the relevant sector or activity] in [that country/indicate the Member State concerned]. Article 34 of Directive 2014/25/EU provides that ‘contracts intended to enable an activity mentioned in Articles 8 to 14 to be carried out shall not be subject to this Directive if the Member State or the contracting entities having introduced the request pursuant to Article 35 can demonstrate that, in the Member State in which it is performed, the activity is directly exposed to competition on markets to which access is not restricted; nor shall design contests that are organised for the pursuit of such an activity in that geographic area be subject to this Directive’. The assessment of direct exposure to competition that can be carried out in the context of Directive 2014/25/EU is without prejudice to the full-fledged application of competition law.

The Commission is allowed a period of [90⁽⁴⁾/105⁽⁵⁾]⁽⁶⁾ working days to take a decision on this request, commencing on the working day referred to above. The period therefore expires on [...].

According to Article 35(5) of Directive 2014/25/EU, further requests concerning [brief mention of the relevant sector or activity] in [indicate the Member State concerned] before the expiry of the period opened in respect of this request shall not be considered as new procedures and shall be treated in the context of this request.

B. Free access to the market cannot be presumed on the basis of the first subparagraph of Article 34(3) of Directive 2014/25/EU

Request [from a Member State/made by a contracting entity⁽⁷⁾]

On [...] the Commission received a request pursuant to Article 35 of Directive 2014/25/EU of the European Parliament and of the Council⁽⁸⁾. The first working day following receipt of the request is [...].

This request, made by [name of the Member State concerned/name of the relevant contracting entity]⁽⁹⁾, concerns [brief mention of the relevant sector or activity] in [that country/indicate the Member State concerned]. Article 34 of Directive 2014/25/EU provides that ‘contracts intended to enable an activity mentioned in Articles 8 to 14 to be carried out shall not be subject to this Directive if the Member State or the contracting entities having introduced the request pursuant to Article 35 can demonstrate that, in the Member State in which it is performed, the activity is directly exposed to competition on markets to which access is not restricted; nor shall design contests that are organised for the pursuit of such an activity in that geographic area be subject to this Directive’. The assessment of direct exposure to competition that can be carried out in the context of Directive 2014/25/EU is without prejudice to the full-fledged application of competition law.

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

The Commission is allowed a period of [130⁽¹⁰⁾/145⁽¹¹⁾]⁽¹²⁾ working days to take a decision on this request, commencing on the working day referred to above. The period therefore expires on [...].

According to Article 35(5) of Directive 2014/25/EU, further requests concerning [brief mention of the relevant sector or activity] in [indicate the Member State concerned] before the expiry of the period opened in respect of this request shall not be considered as new procedures and shall be treated in the context of this request.

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

- (1) Delete as appropriate.
- (2) 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 (OJ L 94, 28.3.2014, p. 243).
- (3) Delete as appropriate.
- (4) Pursuant to paragraph 1 a of Annex IV to Directive 2014/25/EU.
- (5) Pursuant to paragraph 1 a of Annex IV to Directive 2014/25/EU in combination with the second subparagraph of said paragraph 1.
- (6) Delete as appropriate: the 105 working days will apply where the request is not accompanied by a reasoned and substantiated position, adopted by an independent national authority that is competent in relation to the activity concerned, which thoroughly analyses the conditions for the possible applicability of Article 34(1) to the activity concerned.
- (7) Delete as appropriate.
- (8) 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 (OJ L 94, 28.3.2014, p. 243).
- (9) Delete as appropriate.
- (10) Pursuant to paragraph 1 b of Annex IV to Directive 2014/25/EU.
- (11) Pursuant to paragraph 1 b of Annex IV to Directive 2014/25/EU in combination with the second subparagraph of said paragraph 1.
- (12) Delete as appropriate: the 145 working days will apply where the request is not accompanied by a reasoned and substantiated position, adopted by an independent national authority that is competent in relation to the activity concerned, which thoroughly analyses the conditions for the possible applicability of Article 34(1) to the activity concerned.

Changes to legislation:

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