

Commission Implementing Decision (EU) 2016/1804 of 10 October 2016
on the detailed rules for the application of Articles 34 and 35 of Directive
2014/25/EU of the European Parliament and of the Council on procurement
by entities operating in the water, energy, transport and postal services
sectors (notified under document C(2016) 6351) (Text with EEA relevance)

Article 1

1 Requests concerning the applicability of Article 34 of Directive 2014/25/EU submitted in accordance with Article 35 of that Directive ('requests concerning the applicability of Article 34') shall contain at least the information laid down in Annex I to this Decision. They shall follow the structure of Annex I to this Decision.

2 Where an independent national authority that is competent in relation to the activity concerned has adopted a reasoned and substantiated position as referred to in Article 35 of Directive 2014/25/EU, that position shall accompany the request.

3 Except under the particular circumstances referred to in the fourth subparagraph of Article 40(1) and where generalised use of electronic means of communication has been postponed pursuant to Article 106(2) of Directive 2014/25/EU, the requests referred to in paragraph 1 and the positions referred to in paragraph 2 shall be transmitted by electronic means to the electronic mailbox indicated for that purpose on the Commission's website and communicated to the Member States.

4 Where a request as referred to in paragraph 1 or a position as referred to in paragraph 2 is transmitted by other means than electronic means of communication in accordance with Article 40(1) or Article 106(2) of Directive 2014/25/EU, they shall be transmitted in triplicate by post or other suitable carrier to the Commission address published on its website and communicated to the Member States.

Article 2

1 Where the Commission receives a request concerning the applicability of Article 34 and 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, it shall publish a notice containing the information set out in Part A of Annex II to this Decision.

Where the Commission receives a request concerning the applicability of Article 34 and free access to the market cannot be presumed pursuant to the first subparagraph of Article 34(3) of Directive 2014/25/EU, it shall publish a notice containing the information set out in Part B of Annex II to this Decision.

2 Where the period for the adoption of the implementing acts referred to in Article 35 of Directive 2014/25/EU is extended in accordance with the fourth subparagraph of paragraph 1 of Annex IV to that Directive, the Commission shall publish a notice containing the information set out in Part A of Annex III to this Decision.

3 Where the period for the adoption of the implementing acts referred to in Article 35 of Directive 2014/25/EU is suspended in accordance with paragraph 2 of Annex IV to that Directive, the Commission shall publish a notice containing the information set out in Part B of Annex III to this Decision. The Commission shall publish a notice containing the information set out in Part C of Annex III to this Decision when the suspension ends.

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

4 Where the request concerning the applicability of Article 34 of Directive 2014/25/EU is withdrawn by the applicant, the Commission shall publish a notice containing the information set out in Part D of Annex III to this Decision.

5 Where contracts intended to enable a given activity to be carried out and design contests that are organised for the pursuit of such an activity cease to be subject to Directive 2014/25/EU because the Commission has not adopted the implementing act within the period provided for in Annex IV to that Directive, the Commission shall publish a notice containing the information set out in Annex IV to this Decision.

6 The information foreseen in the notices set out in Annexes II, III and IV may be changed and added to as appropriate, for instance where a previously submitted request is substantially modified in accordance with Article 35(4) of Directive 2014/25/EU.

7 The notices provided for in paragraphs 1 to 5 shall be published in the *Official Journal of the European Union*.

Article 3

Decision 2005/15/EC is repealed.

Article 4

This Decision is addressed to the Member States.

Done at Brussels, 10 October 2016.

For the Commission

The President

Jean-Claude JUNCKER

Changes to legislation:

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