C/2024/5169

19.8.2024

Notice of a request concerning the applicability of Article 34 of Directive 2014/25/EU

Request made by a Member State

(C/2024/5169)

On 24 July 2024 the Commission received a request pursuant to Article 35 of Directive 2014/25/EU of the European Parliament and of the Council [1]. The request has been submitted by the Belgian authorities on behalf of Luminus, Norther and Ørsted. The first working day following receipt of the request is 25 July 2024.

This request concerns activities relating to the production and wholesale of electricity in Belgium.

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 105 [2] working days to take a decision on this request, commencing on the working day referred to above. The period therefore expires on 20 December 2024.

According to Article 35(5) of Directive 2014/25/EU, further requests concerning the same activities in Belgium submitted 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.

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[1] Directive 2014/25/EU of the European Parliament and of the Council of 26 February 2014 on procurement procedures 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).

[2] Pursuant to paragraph 1a of Annex IV to Directive 2014/25/EU in combination with the second subparagraph of said paragraph 1.