



2025/2277

13.11.2025

COMMISSION IMPLEMENTING DECISION (EU) 2025/2277

of 12 November 2025

correcting Implementing Decision (EU) 2025/477 on the applicability of Article 34 of Directive 2014/25/EU of the European Parliament and of the Council to the award of contracts for the activities related to the generation and wholesale of electricity in Belgium, with the exception of electricity generated in the Doel 4 and Tihange 3 nuclear power plants

(notified under document C(2025) 7575)

(Only the Dutch and French texts are authentic)

(Text with EEA relevance)

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to 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 ⁽¹⁾, and in particular Article 35(3) thereof,

After consulting the Advisory Committee for Public Contracts,

Whereas:

- (1) On 24 July 2024, the Kingdom of Belgium requested the Commission to establish, pursuant to Article 35(1) of Directive 2014/25/EU ('the request'), that that Directive does not apply to the activities of Luminus, Norther and Ørsted ('the applicants') with regard to electricity generation and wholesale of electricity in Belgium. The request did not cover electricity generation and wholesale from the Doel 4 and Tihange 3 nuclear power plants.
- (2) In response to that request, the Commission adopted Implementing Decision (EU) 2025/477 ⁽²⁾ ('the Decision') on 6 March 2025.
- (3) As noted in recital 13 of the Decision, the Commission took into account, for the purposes of assessing whether the relevant activities are subject to direct competition in the markets concerned, the market share of the main undertakings active in electricity generation and wholesale in Belgium, as well as the existence and the extent of support to renewable electricity generation and wholesale in Belgium through public schemes.
- (4) In the Decision, the Commission clarified that it did not analyse the subsidy scheme for Doel 4 and Tihange 3 nuclear power plants as extended beyond 2025 (recital 22 and footnote 12 of the Decision). With regard to the remaining subsidy schemes, in recital 35 of the Decision, the Commission concluded that electricity generation and wholesale from renewable energy sources receiving fixed and legally defined premiums form a separate market. The Commission reached that conclusion on the basis of the decisions quoted in recital 20 of the Decision. However, recitals 28 and 40 of the Decision refer to recital 18 instead. Therefore, it is necessary to correct Implementing Decision (EU) 2025/477 accordingly in respect of that error.

⁽¹⁾ OJ L 94, 28.3.2014, p. 243, ELI: <http://data.europa.eu/eli/dir/2014/25/oj>.

⁽²⁾ Commission Implementing Decision (EU) 2025/477 of 6 March 2025 on the applicability of Article 34 of Directive 2014/25/EU of the European Parliament and of the Council to the award of contracts for the activities related to the generation and wholesale of electricity in Belgium, with the exception of electricity generated in the Doel 4 and Tihange 3 nuclear power plants (OJ L, 2025/477, 13.3.2025, ELI: http://data.europa.eu/eli/dec_impl/2025/477/oj).

- (5) In the market analysis part of the Decision, Section 3.2.3.2 analyses factors such as market shares and concentration levels; Section 3.2.3.3 analyses the competitive pressure exerted by electricity imports and Section 3.2.3.4 describes the undertakings that are active in the overall electricity generation and wholesale market in Belgium, including the contracting entities. In particular, recitals 57 to 64 of the Decision set out the Commission's analysis of whether contracting authorities could have a dominant influence on Engie.
- (6) Engie was not included in the request. The Kingdom of Belgium stated that Engie does not operate on the European public procurement platforms because, in its view, it is not subject to Directive 2014/25/EU (recital 57 of the Decision). However, in light of the information available at the time of the Decision, the Commission took the view that Engie should be regarded as a contracting entity pursuant to Article 4(2) of Directive 2014/25/EU (recital 64 of the Decision).
- (7) After the adoption of the Decision, Engie approached the Commission with new information about its shareholders and their voting rights. It follows from that information that, contrary to what is indicated in recital 60 of the Decision, the French contracting authorities – shareholders of Engie – have not held at least 50 % of votes actually cast by shareholders at the annual general meetings of Engie's shareholders in all the five years in the period between 2020 and 2024. In fact, in 2022 and 2023, those contracting authorities held slightly less than half of the votes actually cast, with the percentages held by the French State and by the Caisse des Dépôts et Consignations being, on average, 49,92 % in 2022 and 48,55 % in 2023, respectively. The fact that the French contracting authorities did not have a majority of votes cast at all general assemblies in all five years over the 2020-2024 period (but only in 2020, 2021 and 2024) cast a doubt on the conclusion that they exerted a dominant influence over Engie.
- (8) The Commission should also take account of the fact that the possibility for the French State to turn an ordinary share of Engie into a golden share merely affords the French State the right to oppose the sale of strategic assets to a third party. It follows that the Commission's assertion in recital 61 of the Decision that such golden share would give the French State the right to condition the entry of new shareholders into the company's capital above a given threshold to the Minister of Economy's agreement is incorrect.
- (9) Based on the new information provided by Engie, and in the absence of any further evidence regarding possible dominant influence exerted in law or in fact by the contracting authorities over Engie, the Commission no longer has sufficient elements, at this stage, to conclude that contracting authorities could have a dominant influence on Engie and that, therefore, Engie should be regarded as a contracting entity within the meaning of Directive 2014/25/EU. Therefore, it is necessary to correct Implementing Decision (EU) 2025/477 accordingly.
- (10) The fact that the Commission can no longer conclude that Engie is a contracting entity has an impact on the analysis of the conditions of direct exposure to competition in the overall electricity generation and wholesale market in Belgium. Contracting entities, including Luminus, had on that market combined market shares of between 20 % and 30 % in capacity and 15 % and 20 % in generation over the 2019-2023 period (recital 56 of the Decision). That market share is expected to remain stable in the coming years. Luminus, on its own, had 14,1 % of the market in 2023 (recital 42 of the Decision). That is well below the thresholds considered in the case-law of the Court of Justice of the European Union and in the Commission's practice on competition matters as a potential indication of the existence of significant market power. As regards the remaining contracting entities, Northor only operates one wind farm at present and Ørsted is not yet present on the Belgian electricity generation and wholesale market. Both of them, along with Luminus, face competition from other producers (namely, Engie, RWE, Eneco and Total Energy) which are not considered to be contracting entities and which together accounted for over 62 % of the electricity generation and wholesale market, in terms of energy produced, in Belgium in 2023 (recital 42 of the Decision).

- (11) As a result, in light of the new elements concerning Engie brought to the Commission's attention, which existed at the time of the adoption of the Decision, the Commission can no longer consider that the activities of Luminus in the electricity generation and wholesale market in Belgium are not directly exposed to competition. Therefore, it is necessary to correct Implementing Decision (EU) 2025/477 accordingly in respect of the Commission's assessment of the conditions of direct exposure to competition in the overall electricity generation and wholesale market in Belgium as well as its conclusions in that regard.
- (12) Taking into account that the new elements concerning Engie existed at the time of the adoption of Implementing Decision (EU) 2025/477, as well as the effect that the necessary corrections have on the undertakings concerned, this Decision should apply from 6 March 2025,

HAS ADOPTED THIS DECISION:

Article 1

Implementing Decision (EU) 2025/477 is corrected as follows:

- (1) recital 28 is replaced by the following:

‘(28) The applicants claim that those offshore wind parks should be regarded as belonging to the general generation and wholesale market, given that the subsidies received cover no more than the net extra costs of the projects. However, the Commission has, in the decisions referred to in recital 20, repeatedly taken the view that installations receiving fixed subsidies were not part of the overall electricity generation and wholesale market. For the Commission, such subsidies shield beneficiaries from competition by providing guaranteed levels of revenue. The Commission sees no reason to depart from that approach.’;

- (2) recital 40 is replaced by the following:

‘(40) In line with its previous decisions referred to in recital 20, the Commission finds in the present case that fixed and legally defined subsidies for renewable electricity generation do not ensure that the facilities benefitting from such subsidies are directly exposed to competition.’;

- (3) recital 57 to 70 are replaced by the following:

‘(57) Engie has a long-standing presence in the Belgian electricity generation and wholesale market and remains the market leader. It does not operate on the public procurement platforms because it is in the applicants' view not subject to the Directive ⁽²³⁾. Engie exerts a strong competitive pressure on contracting entities in Belgium.

(58) Luminus is the second largest market player: it has a diversified generation portfolio that includes production from nuclear power plants located in Belgium ⁽²³⁾, which gives it access to a stable and (thanks to its low marginal cost) competitive flexible baseload electricity generation source. Luminus also operates hydro and gas-fired power plants in Belgium which provide flexible peak electricity generation. The market share of Luminus remains relatively low. In 2019, its market share was 13,7 % and in 2023 it was 14,1 % ⁽²⁴⁾. Based on the applicants' forecasts, Luminus is expected to remain the second largest market player until at least 2034 ⁽²⁵⁾. Besides Engie, Luminus faces competition from other producers (namely RWE, Eneco and Total Energy) which are not considered to be contracting entities and which together accounted for over 62 % of the electricity generation and wholesale market in Belgium in 2023. It follows that the activities of Luminus are directly exposed to competition on the electricity generation and wholesale market in Belgium.

(59) The HHI index, referred to in recital 46, is an indication, in relation with market shares, that competitors are taking a long time to challenge established players. Market concentration is, nevertheless, expected to drop further due to the planned closure of nuclear reactors in Belgium.

- (60) As regards the other contracting entities, Norther only operates one wind farm at present. Electricity generation from wind is not flexible and is dependent on weather conditions. Ørsted is not yet present on the Belgian electricity generation and wholesale market. Even in the next 10 years, those two companies are not expected to become major players in Belgium ⁽²⁶⁾. Both of them face competition from major players. It follows that the activities of Norther, of the other subsidiaries of Nethys and of Ørsted are directly exposed to competition on the electricity generation and wholesale market in Belgium.

⁽²²⁾ Para. 164 of the request.

⁽²³⁾ Luminus also enjoys drawing rights on some French nuclear power plants. Luminus' controlling shareholder (EDF) operates a fleet of 56 nuclear reactors in France. French nuclear electricity production can be imported in Belgium via the interconnections between the two countries.

⁽²⁴⁾ See Table 8 of Annex II to the request.

⁽²⁵⁾ *Ibid.*

⁽²⁶⁾ *Ibid.*;

- (4) recitals 71 to 76 are replaced by the following:

'4. CONCLUSION

- (61) Since the conditions set out for an exemption in Article 34 of Directive 2014/25/EU are not met, Directive 2014/25/EU should continue to apply to contracts intended to enable the pursuit of renewable electricity generation receiving fixed and legally defined premiums in Belgium.

- (62) In view of the factors examined in recitals 40 to 60, the condition of direct exposure to competition laid down in Article 34(1) of Directive 2014/25/EU should be considered to be met in Belgium in respect of the activities related to the overall electricity generation and wholesale market in Belgium.

- (63) Directive 2014/25/EU should therefore not apply where contracting entities award contracts intended to enable those activities, or where design contests as defined in Article 2, point (17), of Directive 2014/25/EU are organised for the pursuit of such activities in that geographic area.

- (64) This Decision is without prejudice to the application of the Union rules on competition and of the provisions in other fields of Union law. In particular, the criteria and the methodology used to assess direct exposure to competition under Article 34 of Directive 2014/25/EU are not necessarily identical to those used to perform an assessment under Article 101 or 102 of the Treaty or Council Regulation (EC) No 139/2004 ⁽²⁷⁾, as confirmed by the General Court of the European Union ⁽²⁸⁾,

⁽²⁷⁾ Council Regulation (EC) No 139/2004 of 20 January 2004 on the control of concentrations between undertakings (the EC Merger Regulation) (OJ L 24, 29.1.2004, p. 1, ELI: <http://data.europa.eu/eli/reg/2004/139/oj>).

⁽²⁸⁾ Judgment of the General Court of 27 April 2016, *Österreichische Post AG v Commission*, T-463/14, ECLI:EU:T:2016:243, paragraph 28. See also Directive 2014/25/EU, recital 44.;

- (5) Article 2 is replaced by the following:

'Article 2

Without prejudice to Article 1, Directive 2014/25/EU shall not apply to the awarding of contracts intended to enable the electricity generation and wholesale activities to be carried out in Belgium, with the exception of electricity generation and wholesale activities from Doel 4 and Tihange 3, which fall outside the scope of this Decision.'

Article 2

This Decision is addressed to the Kingdom of Belgium.

It shall apply as of 6 March 2025.

Done at Brussels, 12 November 2025.

For the Commission
Stéphane SÉJOURNÉ
Executive Vice-President