

Commission Directive 2006/111/EC of 16 November 2006 on the transparency of financial relations between Member States and public undertakings as well as on financial transparency within certain undertakings (Text with EEA relevance) (Codified version)

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(Text with EEA relevance)

(Codified version)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community, and in particular Article 86(3) thereof,

Whereas:

- (1) Commission Directive 80/723/EEC of 25 June 1980 on the transparency of financial relations between Member States and public undertakings as well as on financial transparency within certain undertakings⁽¹⁾ has been substantially amended several times⁽²⁾. In the interests of clarity and rationality the said Directive should be codified.
- (2) Public undertakings play a substantial role in the national economy of the Member States.
- (3) Member States sometimes grant special or exclusive rights to particular undertakings, or make payments or give some other kind of compensation to particular undertakings entrusted with the operation of services of general economic interest. These undertakings are often also in competition with other undertakings.
- (4) Article 295 of the Treaty provides that the Treaty is in no way to prejudice the rules in Member States governing the system of property ownership. There should be no unjustified discrimination between public and private undertakings in the application of the rules on competition. This Directive should apply to both public and private undertakings.
- (5) The Treaty requires the Commission to ensure that Member States do not grant undertakings, public or private, aids incompatible with the common market.
- (6) However, the complexity of the financial relations between national public authorities and public undertakings tends to hinder the performance of this duty.
- (7) A fair and effective application of the aid rules in the Treaty to both public and private undertakings will be possible only if these financial relations are made transparent.

- (8) Such transparency applied to public undertakings should enable a clear distinction to be made between the role of the State as public authority and its role as proprietor.
- (9) Article 86(1) of the Treaty imposes obligations on Member States in the case of public undertakings and undertakings to which Member States grant special or exclusive rights. Article 86(2) of the Treaty applies to undertakings entrusted with the operation of services of general economic interest. Article 86(3) of the Treaty requires the Commission to ensure the application of the provisions of that Article and provides it with the requisite means to this end. In order to ensure the application of the provisions of Article 86 of the Treaty the Commission must have the necessary information. This entails defining the conditions for ensuring such transparency.
- (10) It should be made clear what is to be understood by the terms ‘public authorities’ and ‘public undertakings’.
- (11) The Member States have differing administrative territorial structures. This Directive should cover public authorities at all levels in each Member State.
- (12) Public authorities may exercise a dominant influence on the behaviour of public undertakings not only where they are the proprietor or have a majority participation but also by virtue of powers they hold in management or supervisory bodies as a result either of the rules governing the undertaking or of the manner in which the shareholdings are distributed.
- (13) The provision of public funds to public undertakings may take place either directly or indirectly. Transparency must be achieved irrespective of the manner in which such provision of public funds is made. It may also be necessary to ensure that adequate information is made available as regards the reasons for such provision of public funds and their actual use.
- (14) Complex situations linked to the diverse forms of public and private undertakings granted special or exclusive rights or entrusted with the operation of services of general economic interest as well as the range of activities that might be carried on by a single undertaking and the different degrees of market liberalisation in the various Member States could complicate application of the competition rules, and particularly Article 86 of the Treaty. It is therefore necessary for Member States and the Commission to have detailed data about the internal and financial and organisational structure of such undertakings, in particular separate and reliable accounts relating to different activities carried on by the same undertaking.
- (15) The accounts should show the distinction between different activities, the costs and revenues associated with each activity and the methods of cost and revenue assignment and allocation. Such separate accounts should be available in relation to, on the one hand, products and services in respect of which the Member State has granted a special or exclusive right or entrusted the undertaking with the operation of a service of general economic interest, as well as, on the other hand, for each other product or service in respect of which the undertaking is active. The obligation of separation of accounts should not apply to undertakings whose activities are limited to the provision of services of general economic interest and which do not operate activities outside the scope

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of these services of general economic interest. It does not seem necessary to require separation of accounts within the area of services of general economic interest or within the area of the special or exclusive rights, as far as this is not necessary for the cost and revenue allocation between these services and products and those outside the services of general economic interest or the special or exclusive rights.

- (16) Requiring Member States to ensure that the relevant undertakings maintain such separate accounts is the most efficient means by which fair and effective application of the rules of competition to such undertakings can be assured. In 1996 the Commission adopted a Communication on services of general interest in Europe⁽³⁾, which was supplemented by another Communication in 2001⁽⁴⁾, in which it emphasised the importance of such services. It is necessary to take account of the importance of the sectors concerned, which may involve services of general interest, the strong market position that the relevant undertakings may have and the vulnerability of emerging competition in the sectors being liberalised. In accordance with the principle of proportionality it is necessary and appropriate for the achievement of the basic objective of transparency to lay down rules on such separate accounts. This Directive does not go beyond what is necessary in order to achieve the objectives pursued, in accordance with the provisions of the third paragraph of Article 5 of the Treaty.
- (17) In certain sectors provisions adopted by the Community require Member States and certain undertakings to maintain separate accounts. It is necessary to ensure an equal treatment for all economic activities throughout the Community and to extend the requirement to maintain separate accounts to all comparable situations. This Directive should not amend specific rules established for the same purpose in other Community provisions and should not apply to activities of undertakings covered by those provisions.
- (18) Certain undertakings should be excluded from the application of this Directive by virtue of the size of their turnover. This applies to those public undertakings whose business is not conducted on such a scale as to justify the administrative burden of ensuring transparency. In view of the limited potential for an effect on trade between Member States, it is not necessary, at this time, to require separate accounts in relation to the supply of certain categories of services.
- (19) This Directive is without prejudice to other provisions of the Treaty, notably Articles 86(2), 88 and 296, and to any other rules concerning the provision of information by Member States to the Commission.
- (20) In cases where the compensation for the fulfilment of services of general economic interest has been fixed for an appropriate period following an open, transparent and non-discriminatory procedure it does not seem necessary to require such undertakings to maintain separate accounts.
- (21) The undertakings in question being in competition with other undertakings, information acquired should be covered by the obligation of professional secrecy.
- (22) A reporting system based on *ex post facto* checks of the financial flows between public authorities and public undertakings operating in the manufacturing sector will enable

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the Commission to fulfil its obligations. That system of control must cover specific financial information.

- (23) In order to limit the administrative burden on Member States, the reporting system should make use of both publicly available data and information available to majority shareholders. The presentation of consolidated reports is to be permitted. Incompatible aid to major undertakings operating in the manufacturing sector will have the greatest distortive effect on competition in the common market. Therefore, such a reporting system may at present be limited to undertakings with a yearly turnover of more than EUR 250 million.
- (24) This Directive should be without prejudice to the obligations of the Member States relating to the time-limits for transposition into national law of the Directives set out in Annex I, Part B,

HAS ADOPTED THIS DIRECTIVE:

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- (1) [OJ L 195, 29.7.1980, p. 35](#). Directive as last amended by Directive 2005/81/EC ([OJ L 312, 29.11.2005, p. 47](#)).
- (2) See Annex I, Part A.
- (3) [OJ C 281, 26.9.1996, p. 3](#).
- (4) [OJ C 17, 19.1.2001, p. 4](#).