Summary: Intervention & Options

Department /Agency:	Title: Impact Assessment of THE FINANCIAL TRANSPARENCY (EC DIRECTIVE) REGULATIONS 2009	
Stage: Final/Implementation	Version:	Date: 25 August 2009

Related Publications: Community Directive (2006/111/EC) and earlier Directives amending Community Directive 80/723/EC.

Available to view or download at:

http://www.berr.gov.uk/whatwedo/businesslaw/state-aid/index.html

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What is the problem under consideration? Why is government intervention necessary?

The Directive enhances the ability of the European Commission to investigate allegations of the granting of illegal state aid. It is in the interests of the UK that such complaints should be investigated in a timely fashion, which the Directive should facilitate, which will also expedite orders to recover any illegal state aid. This helps ensure a level playing field across the EU. The UK Government has determined that it needs to take action in the form of secondary legislation to respect its obligations under Community law to transpose the Directive into national law.

What are the policy objectives and the intended effects?

To underpin the European Community State Aid regime by requiring aid to be made more transparent. This ensures accountability between public authorities and public undertakings. It ensure that there is a fair an effective application of the State Aid rules.

The Directive requires bodies, both public and private – engaged in commercial activities and in receipt of funding to for delivering SGEIs to ensure that their management accounts are sufficiently separate, in order to distinguish between SGEIs and their commercial activities. The impact of the Directive for the UK will be minimal, especially for SMEs, because the Directive applies to bodies with annual turnover of 40 million Euros or more. Such public bodies engaged in commercial activities need to ensure that they are able to inform the European Commission if requested, via the Secretary of State, of public authority support, and should maintain records, for five years, of funds received and to which use they are put.

What policy options have been considered? Please justify any preferred option.

Implementing the Directive is the government's preferred option. It will help ensure transparency of accounts, something that is not easily identifiable under State Aid rules. It will also help ensure compliance. It will help avoid the risk of subsidisation of public funds into an organisation's commercial activity.

This is compared against a 'do nothing' option i.e. not implementing the Directive.

When will the policy be reviewed to establish the actual costs and benefits and the achievement of the desired effects? The European Commission is under a duty to keep State Aid legislation under review, the UK will respond to any amendments as appropriate.

Ministerial Sign-off For SELECT STAGE Impact Assessments:

I have read the Impact Assessment and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the leading options.

Signed by the responsible Minister:

X .... Date: 12/10/09

Summary: Analysis & Evidence

Policy Option: **Description:**

COSTS			
ANNUAL COSTS		Description and scale of **key monetised costs** by 'main affected groups' Possible additional costs of retaining records are minimal, as the UK Consultation found that the bodies that will need to comply with the Directive, already have the required reporting mechanisms in place and comply with the Directive. Costs are expected to be negligible.	
One-off (Transition)	**Yrs**		
£ 0			
Average Annual Cost (excluding one-off)			
£0		**Total Cost** (PV)	**£N/Q**
Other **key non-monetised costs** by 'main affected groups' N/A			

BENEFITS			
ANNUAL BENEFITS		Description and scale of **key monetised benefits** by 'main affected groups'	
One-off	**Yrs**		
£ N/Q			
Average Annual Benefit (excluding one-off)			
£ N/Q		**Total Benefit** (PV)	**£ N/Q**
Other **key non-monetised benefits** by 'main affected groups' Ensuring transparency helps ensuring a level playing field when applying for, allocation and monitoring of public funds to public and private bodies delivering SEGIs.			

Key Assumptions/Sensitivities/Risks Costs will depend on the systems that affected organisations already have in place. The scope of the Regulations will largely be determined by public authorities own assessment.

Price Base Year 2008	Time Period Years 10	**Net Benefit Range** (NPV) **£ N/Q**	**NET BENEFIT** (NPV Best estimate) **£ N/Q**

What is the geographic coverage of the policy/option?			UK	
On what date will the policy be implemented?			19/09/09	
Which organisation(s) will enforce the policy?			BIS	
What is the total annual cost of enforcement for these organisations?			£ 0	
Does enforcement comply with Hampton principles?			Yes	
Will implementation go beyond minimum EU requirements?			No	
What is the value of the proposed offsetting measure per year?			£ N/A	
What is the value of changes in greenhouse gas emissions?			£ N/A	
Will the proposal have a significant impact on competition?			No	
Annual cost (£-£) per organisation (excluding one-off)	Micro **N/A**	Small **N/A**	Medium	Large
Are any of these organisations exempt?	No	No	N/A	N/A

Impact on Admin Burdens Baseline (2005 Prices) (Increase - Decrease)

Increase of £ 0 Decrease of £ 0 **Net Impact** £ 0

Key: **Annual costs and benefits: Constant Prices** **(Net) Present Value**

Evidence Base (for summary sheets)

[Use this space (with a recommended maximum of 30 pages) to set out the evidence, analysis and detailed narrative from which you have generated your policy options or proposal. Ensure that the information is organised in such a way as to explain clearly the summary information on the preceding pages of this form.]

STRATEGIC OVERVIEW

The Transparency Directive requires bodies (whether public or private) engaged in commercial activities and in receipt of funding for the performance of Services of General Economic Interest (SGEIs) to ensure that their management accounts are sufficiently separate to distinguish between these activities and their purely commercial activities (whose annual turnover - amongst other things- is at least €40m).

Public bodies (the €40m threshold also applies) engaged in commercial activities, should ensure that they are able to inform the Commission, if requested, of the support they receive from public authorities.

And finally, public bodies engaged in the manufacturing sector (with an annual turnover above €250m) are required to supply details of their annual report and accounts and certain specified information, to the Commission on an annual basis. The rationale of the Directive is to identify where public money is going so that any cross subsidy of commercial activities can be identified.

Context:

This section provides an overview of the Implementation History.

The Financial Transparency Directive dates from 1980 (Commission Directive 80/723/EEC of June 1980) and has been successively amended in 1985, in 1993 and most recently by the 2000 and 2005 Directives. Prior to the latest amendments, compliance with the 1980 and 1985 Directives was achieved by administrative procedures, i.e. utilising existing government accounting systems means. The 1993 Directive, which introduced a requirement on public undertakings operating in the manufacturing sector with a turnover of at least €250 million, was considered to have no application in the UK. The 2000 Directive broadens the range of undertakings covered, while the amendment in 2005 clarifies that all funding for SGEIs is covered, irrespective of State aid status, and separate accounts must be kept.

Since 1980 the range and variety of public authorities providing, and public undertakings in receipt of, public funds has increased. The Department has gathered some information about the public authorities and undertakings concerned and more particularly about the mechanisms in place to ensure implementation of the original 1980 Directive and subsequent amendments.

The EU Transparency Directive

The Directive requires bodies engaged in commercial activities and in receipt of funding for the performance of Services of General Economic Interest (SGEIs) to ensure that their management accounts are sufficiently separate to distinguish between these activities and their purely commercial activities (whose annual turnover is at least €40m). While this applies to both public and private bodies, our research indicates that SGEIs are most likely to be performed by public bodies which already have appropriate systems in place.

The Directive principally applies to large public bodies who undertake Services of General Economic Interest alongside commercial activities. None of changes will have a significant impact to business. Public bodies (the €40m threshold also applies) engaged in commercial activities, should ensure that they are able to inform the Commission, if requested, of the support they receive from public authorities. In addition, public bodies engaged in the manufacturing sector (with an annual turnover above €250m) are required to supply details of their annual report and accounts and certain specified information, to the Commission on an annual basis.

Respondents to our formal consultation in 2005 either did not anticipate an additional burden or were not in a position to quantify it. We did not receive evidence that reporting requirements for public undertakings set out in the Directive will exceed existing requirements, and we are unaware of public bodies within the manufacturing sector in the UK that would fall within the scope of the Directive. Given the turnover qualification, it is unlikely that SMEs will have to implement the Directive.

Member States are under a duty to implement Directives pursuant to Articles 10 and 249 of the European Community Treaty i.e. Member States should ensure that implementation gives rise to legally enforceable rights and obligations under the Directive.

Options

Two options are considered:

Implementing the Directive (the government's preferred option)

The Government has decided to introduce secondary legislation. This will provide certainty as regards the requirements imposed on undertakings by the Directive and should resolve infraction proceedings being taken against the UK.

Do nothing:

The option to do nothing may result in Infraction proceedings against the UK for non-compliance with EU law. In this case, infraction proceedings have been instituted, and as such implementing the Directive will avoid the penalties associated with these proceedings.

PURPOSES AND INTENDED SCOPE OF THE MEASURES

i) The Objective

The Directives enhance the European Commission's investigative capabilities in the area of illegal state aid by introducing a reporting regime for both public and private undertakings in receipt of public funds. We have determined that administrative procedures would not now be adequate to guarantee full compliance with the Directive as recently amended, and will therefore ensure compliance via a statutory instrument.

ii) Scope and obligations

Firstly, the regime seeks to ensure that the accounts of public undertakings are sufficiently transparent to expose the funding they receive from public authorities, that is not easily identifiable as State aid and which may consequently escape the State aid rules.

Secondly, to ensure that the accounts of undertakings (whether private or public) are sufficiently transparent to help identify the cross-subsidisation of their other activities by public funds, where the level of compensation to undertakings for the delivery of public service obligations is excessive.

The Directive requires bodies (whether public or private) engaged in commercial activities and in receipt of funding for the performance of SGEI to ensure that their management accounts are sufficiently separate to distinguish between these activities and their purely commercial activities (whose annual turnover - amongst other things- is at least €40m). Public bodies engaged in commercial activities, should ensure that they are able to inform the Commission, if requested, of the support they receive from public authorities (the €40m threshold also applies). They should maintain records of the funds received and the use to which they are put. The records are to be retained for 5 years and made available to the Commission as and when required. Finally, public undertakings in the manufacturing sector whose turnover in any previous financial year is at least €250m are required to supply details of their annual report and accounts and certain specified information to the Commission on an annual basis.

Devolution: The Directive applies throughout the United Kingdom.

Undermining of Community state aid regime.

The purpose of the Directive is to underpin the European Community State aid regime by requiring such aid to be made transparent. Without such transparency there is a real risk that the regime will be unable to expose funding (particularly since the enlargement of the Community– the new members comprising mainly Eastern European countries) which is not easily identifiable as State aid. There is also the added risk that such funding may seep into an organisation's other (commercial) activities, thereby cross-subsidising those areas with public funds. In both cases intra-community competition is vulnerable to distortion.

Detail:

(a) To comply with our EC obligations the UK will need to ensure that undertakings caught by the Directives prepare accounts that fulfil the requirements in the Directives. The administrative procedures in place during 1980 and 1985 are not now sufficient to ensure full compliance with the latest amending Directives.

Undertakings, caught by the Directive, will be subject to accounting principles and regulations. Whilst accounting principles such as the Statement of Standard Accounting Practice 25 (SSAP25) will achieve a certain amount of disaggregation in the accounts of companies to which it applies, in terms of separating the financial results, i.e. profit and loss accounts, and the balance sheet by line of business and geographical area, it is unlikely to meet the requirements in the Directives for the following reasons:

- SSAP25 only applies to public limited companies or entities that have plcs as subsidiaries. As well as corporate undertakings, the Directives also apply to non-corporate undertakings.
- SSAP25 is currently not mandatory (indeed company directors can choose not to apply the rule where they believe and can support the view that to disclose the information would seriously prejudice the commercial interests of the company or group).
- Only high-level information need be disclosed. Consequently, if one is interested in transactions with, for example, government, then this information is unlikely to be shown as part of the segmental reporting, unless there is a specific part of the organisation that transacts with government.

Based on contact with the Financial Reporting Council (FRC), the Accounting Standards Board (ASB), the Chartered Institute of Public Finance and Accounting (CIPFA) and BIS Company Law, we do not believe that there is anything 'standards based' with the effect of requiring separate accounts in the circumstances set out in the Directive. There are no requirements in the Accounting Standards Board guidance (which in this respect echoes company law) and there are certainly no such requirements for private sector companies arising from public sector financial reporting guidance promulgated by CIPFA/Local Authority (Scotland) Accounts Advisory Committee (LASAAC), HM Treasury, the health sector or the devolved administrations.

With respect to 'existing good practice', we have considered whether there might be a body of established "separate accounting" for publicly funded private sector work resulting from good practice guidance such as CIPFA's Best Value Code of Practice (BVACOP). While BVACOP requires careful calculation of total costs as seen by local authorities, including appropriate allocation of overheads, the guidance has no locus over private sector partners.

(b) Member States are under a duty to implement Directives pursuant to Articles 10 and 249 of the European Community Treaty i.e. Member States should ensure that implementation gives rise to legally enforceable rights and obligations under the Directive(s). Implementation of EC Directives by administrative procedures is not generally considered sufficient under EC law.

CONCLUSION

We will introduce secondary legislation. This will provide certainty as regards the requirements imposed on undertakings by the Directive. It will place an obligation on the undertaking concerned to put in place mechanisms to ensure compliance. Further, there will be no issue regarding the creation of binding obligations, as the measures will be enforceable via contract.

BENEFITS

Secondary legislation will ensure implementation in the UK and consequently that the objectives of the Directive, which the UK supports, are met. Across the European Union increased financial transparency will provide the European Commission with the information required to investigate complaints from third parties regarding illegal State aid. The total amount of aid ruled incompatible between 2000 and 2007 was at least €9 billion. This includes the cross subsidising of an undertaking's other activities using public funds. The Directive will help the Commission to identify illegal aid which can have a significant distortive impact on competition, and thus facilitate a level playing field for business across the EU.

Improved competition will in turn maximise social welfare. Obligations under the Directives will be brigaded under a single umbrella instrument, aiding simplicity and certainty.

Given that the obligations are not targeted at any particular sector or sectors, issues of equity and fairness are likely to be neutral.

COSTS

Quantifying the impact of the Directive on the UK private and public sectors, i.e. how many and which organisations are caught has been difficult given that there are arguments for construing the scope of the Directive both broadly and narrowly, with key terms undefined. HMG is providing guidance to enable public authorities to make an intelligent judgement as to whether any funding that they provide is caught by the Directive.

However, it is the view of BIS that costs for public and private undertakings arising from introducing secondary legislation will be less than £20m and may well be negligible. In 2008, BIS took a representative sample of England and wrote to all the local authorities in the West Midlands and East Anglia; there were no reported instances of funding SGEIs. In Scotland a parallel exercise reported some funding for Credit Unions and transport lifelines.

Public undertakings that will be caught by the Regulations, in many cases, already have accounting systems in place that are able to disaggregate the required information, and equally those undertakings that deliver an SGEI alongside a commercial service will maintain separate accounts. In any case, any costs are likely to fall over time, as staff becomes accustomed to the requirements.

As the obligations in the Directives fall primarily on undertakings with a total net annual turnover in the two preceding years of €40m or more, we estimate that such an entity will have in place an internal management accounting system (in compliance with the rules and regulations set by accountancy bodies) that is able to help ensure compliance. In the absence of any in-house expertise and or systems, the extra costs involved in complying with the Directive would not extend beyond the cost of employing an accountant as a consultant at the prevailing market rate. Further, the cost of meeting a request from the Commission via the Secretary of State has been assessed to be nominal. The information requested should be readily available, as the regime requires all relevant information to be maintained for 5 years. Locating, extracting and supplying the relevant information for the Commission should not entail any significant costs.

Other costs

No significant costs on society. Given that the accounting structures needed to guarantee financial transparency are either in place or can be put in place with relative ease, any second order or distributional effects (e.g. higher fixed costs, given tougher accounting standards that could be passed on to the consumer) will be minimal.

ENFORCEMENT AND SANCTION

The Regulations will be enforced through contract law. An obligation will be placed on public authorities to ensure that any grant of aid, compensation or special rights in return for the provision of a service of general economic interest will be conditional upon the undertaking in receipt of the aid, compensation or special right, agreeing that they would abide by certain terms and allow access to their accounts in the case of complaint to the public authority (which will ensure compliance with the Directive). If a public authority fails to insert the terms into an agreement the term will be implied.

Enforcement will therefore be vested in contract law, with non-compliance with the terms of the acceptance letter being a breach of contract.

If a complaint cannot not be resolved via an initial approach to the relevant public authority, inviting it to exercise its contractual rights, then an appeal may be made to BIS State Aid Branch. BIS would then be in a position to remind any relevant public authority that a failure to assert its contractual rights might constitute a breach by the UK of its obligations under European Community law.

MONITORING AND REVIEW

In order to monitor and assess implementation, it is proposed that a request will be made to stakeholders, post implementation, for feedback to be sent to the BIS State Aid Branch for continuing evaluation.

However, it is principally the European Commission's responsibility to monitor the operation of the Directive itself. The Commission is under a duty to keep all State Aid legislation under review; and the UK will amend its domestic legislation in accordance with any amendments.

SUMMARY

The introduction of secondary legislation will enable the UK to be fully compliant with its Community obligations and have in place mechanisms to ensure that the obligations in the Directives are observed. Secondly, it is not believed that the obligations in the draft Regulations will add significant burdens, on the undertakings affected. Implementation of the consolidated Directives through a single piece of legislation should ensure clarity and certainty as to the requirements imposed.

SPECIFIC IMPACT TESTS

CONSULTATION WITH SMALL BUSINESS: THE SMALL BUSINESS IMPACT TEST.

Based on the Office of National Statistics' Inter Departmental Business Register (IDBR) [1] about 3,500 businesses employing less than 250 people have an annual turnover of more than £28m[2]. This is an estimated figure and comes from the IDBR enterprise table as at December 2008 and includes all types of business, not just registered companies). As stage one of the small firms impact test, the Department

[1] This represents about 99.5%of UK businesses out of an approximate total of 1.6m.
[2] €1=£0.917250 on 01/02/09

consulted the Federation of Small Businesses which confirmed that the Directive is unlikely to have an impact on their members, most of whose turnover is well below the threshold. We consulted the Small Business Service, as was, who concluded that as these proposals were unlikely to disproportionately impact on small firms there was no requirement to carry out stage two of the small firms impact test.

COMPETITION ASSESSMENT

Increased transparency should help reduce cross-subsidisation, which would improve competition. This is consistent with the UK's desire to see better-targeted aid across the internal market. Although the Directive is not sector specific, which may cause difficulties in estimating its impact on competition, any detrimental effect on competition will be minimal for the following reasons: -

- The Directive will largely affect undertakings that already dominate the market (given that their annual turnover was above €40m in the two years prior to the funds being made available and that they have been given special or exclusive rights or entrusted with the operation of a service of general economic interest). It should be borne in mind that the €40m threshold does not apply to the obligations on public undertakings.
- Assuming that they have similar accounting systems, the costs of implementing the Directive are unlikely to affect some undertakings more than other. Hence market structure is not likely to be affected.
- The Directive will not deter new or potential firms from setting up. They will be subject to the same accounting/financial transparency requirements demanded of incumbents, but given the thresholds that apply start-ups are unlikely to be affected.
- The Directive will not restrict the ability of undertakings to choose the price, quality, range or location of their service or products.

Race, Disability and Gender Equality

After initial screening as to the potential impact of the Directive on race, disability and gender equality, it has been decided that there will be no impact upon minority groups in terms of numbers affected or the seriousness of the likely impact

Legal Aid, Sustainable Development, Carbon Assessment, Other Environment, Health Impact Assessment, Human Rights, Rural Proofing.

There is no impact on these aspects.

Specific Impact Tests: Checklist

Use the table below to demonstrate how broadly you have considered the potential impacts of your policy options.

Ensure that the results of any tests that impact on the cost-benefit analysis are contained within the main evidence base; other results may be annexed.

Type of testing undertaken	***Results in Evidence Base?***	***Results annexed?***
Competition Assessment	Yes	Yes/No
Small Firms Impact Test	Yes	Yes/No
Legal Aid	Yes	Yes/No
Sustainable Development	Yes	Yes/No
Carbon Assessment	Yes	Yes/No
Other Environment	Yes	Yes/No
Health Impact Assessment	Yes	Yes/No
Race Equality	Yes	Yes/No
Disability Equality	Yes	Yes/No
Gender Equality	Yes	Yes/No
Human Rights	Yes	Yes/No
Rural Proofing	Yes	Yes/No