

COMMISSION DIRECTIVE 2005/81/EC

of 28 November 2005

amending Directive 80/723/EEC 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)

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⁽¹⁾ requires Member States to ensure the transparency of financial relations between public authorities and public undertakings as well as within certain undertakings. Undertakings required to maintain separate accounts are undertakings that enjoy special or exclusive rights granted by a Member State as referred to in Article 86(1) of the Treaty or are entrusted with the operation of a service of general economic interest as referred to in Article 86(2) of the Treaty and receive State aid in any form whatsoever in relation to such service and that carry on other activities.

(2) Member States may grant firms entrusted with the operation of services of general economic interest compensation to cover the specific costs of such services. Such compensation may not, however, exceed what is necessary for the operation of the services in question and must not be used to finance activities outside the scope of the service of general economic interest.

(3) Pursuant to Directive 80/723/EEC, separate accounts must be maintained only where an undertaking entrusted with the operation of services of general economic interest receives State aid. In its judgment in *Altmark Trans GmbH*⁽²⁾ the Court of Justice of the European Communities held that, under certain conditions, public service compensation does not constitute State aid within the meaning of Article 87(1) of the Treaty.

(4) However, irrespective of the legal classification of public service compensation in the light of Article 87(1) of the Treaty, the obligation to maintain separate accounts should apply to all undertakings receiving such compensation that also carry on activities outside the scope of the service of general economic interest. It is only by maintaining separate accounts that the costs imputable to the service of general economic interest can be identified and the correct amount of compensation calculated.

(5) Directive 80/723/EEC should therefore be amended accordingly,

HAS ADOPTED THIS DIRECTIVE:

Article 1

Article 2(1)(d) of Directive 80/723/EEC is replaced by the following:

‘(d) undertaking required to maintain separate accounts. means any undertaking that enjoys a special or exclusive right granted by a Member State pursuant to Article 86(1) of the Treaty or is entrusted with the operation of a service of general economic interest pursuant to Article 86(2) of the Treaty, that receives public service compensation in any form whatsoever in relation to such service and that carries on other activities;’.

Article 2

Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by 19 December 2006 at the latest. They shall forthwith communicate to the Commission the text of those provisions and a correlation table between those provisions and this Directive.

When Member States adopt those provisions, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. Member States shall determine how such reference is to be made.

⁽¹⁾ OJ L 195, 29.7.1980, p. 35. Directive as last amended by Directive 2000/52/EC (OJ L 193, 29.7.2000, p. 75).

⁽²⁾ Case C-280/00 *Altmark Trans GmbH and Regierungspräsidium Magdeburg v Nahverkehrsgesellschaft Altmark GmbH* [2003] ECR I-7747.

Article 3

This Directive shall enter into force on the 20th day following its publication in the *Official Journal of the European Union*.

Article 4

This Directive is addressed to the Member States.

Done at Brussels, 28 November 2005.

For the Commission
Neelie KROES
Member of the Commission
