

Good morning to everybody.

My name is Fernando Sendra Palmer and I will introduce you to the COMMISSION DIRECTIVE 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 (80/723/EEC). The so-called “Transparency Directive”.

The abovementioned directive has been amended by Commission Directive 85/413/EEC of 24 July 1985, Commission Directive 93/84/EEC of 30 September 1993 and Commission Directive 2000/52/EC of 26 July 2000. Moreover, a further amendment took place following Commission’s meeting of 13 July 2005. As far as I know, this latter amendment has not yet been published in the O.J.

In order to avoid unnecessary complexity, I will speak about the current consolidated version of the Directive.

The Directive considers that 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.

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.

I will follow by explaining briefly the 9 articles of the Directive.

Article 1 of the Directive defines the obligations of the Member States with regard to:

On the one hand, to ensure that financial relations between public authorities and public undertakings are transparent -Article 1(1)-and

On the other hand, to ensure that the financial and organisational structure of any undertaking required to maintain separate accounts is correctly reflected in the separate accounts. –Article 1(2)

For the transparency of financial relations the public funds made available directly by public authorities or through the intermediary of public undertakings and their use must emerge clearly.

As regards the separate accounts, it is important to show up the costs and revenues associated with different activities as well as full details of the methods by which costs and revenues are allocated to different activities.

Article 2 defines the terms used in the Directive.

I will focus in the most important ones, in my view.

(a) ‘public authorities’ means all public authorities, including the State and regional, local and all other territorial authorities;

(b) ‘public undertakings’ means any undertaking over which the public authorities may exercise directly or indirectly a dominant influence.

A dominant influence is presumed when the public authorities, directly or indirectly in relation to an undertaking:

(i) hold the major part of the capital; or

(ii) control the majority of the votes or

(iii) can appoint more than half of the members of the undertaking's administrative, managerial or supervisory body.

(c) ‘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 that is entrusted with the operation of a service of general economic interest pursuant to Article 86(2) of the Treaty and receives State aid in any form whatsoever, in relation to such service and which carries on other activities.

Article 3 describes in particular some transactions to which the transparency refers to in Article 1(1), when stating the obligation of Member States to ensure transparency of financial relations between public authorities and public undertakings (i.e. the setting-off of operating losses, the provision of capital, non-refundable grants, or loans on privileged terms, forgoing the recovery of sums due, or the forgoing of a normal return on public funds). This list is not exhaustive and must be understood as covering any financial advantages granting by the public authorities to public undertakings.

Article 3a relates to the undertakings required to maintain separate accounts. The accounting principles must be clearly established, consistently applied and justifiable.

Article 4(1) of the Directive cites the public undertaking to which Article 1(1) does not apply:

- It does not apply, basically, to public undertakings whose total annual net turnover over the latest two years has been less than EUR 40 million. However, for public credit institutions the corresponding threshold shall be a balance sheet total of EUR 800 million.

Article 4(2) lists the exemptions of Article 1(2). As regards the thresholds, these are the same as for Article 4(1). Moreover, Article 1(2) does not apply to undertakings which have been entrusted with the operation of services of general economic interest if the State aid, including any compensation they receive was fixed following an open, transparent and non-discriminating procedure.

Article 5 of the Directive refers to the period Member States shall ensure that information concerning either the financial relations referred to in Article 1(1) or the financial and organisational structure of undertakings (separate accounts) referred to in Article 1(2) is kept at the disposal of the Commission for five years, in general.

Moreover, Member States shall supply to the Commission the abovementioned information, if the Commission considers requests it, with the necessary background information, notably the objectives pursued.

According to Article 5a, Member States whose public undertakings operate in the manufacturing sector with a turnover more than EUR 250 million shall supply to the Commission on an annual basis the annual report and annual accounts of those manufacturing public undertakings, as well as further details, in so far as not disclosed in the annual report (i.e. other forms of State intervention).

For public enterprises splitting their activities into several legally distinct undertakings, the Commission accepts one consolidated report. The consolidation should reflect the economic reality of a group of enterprises operating in the same or closely related sectors.

The information shall be provided within 15 working days of the date of publication of the annual report of the public undertaking concerned. In any case, and specifically for undertakings which do not publish an annual report, the required information shall be submitted not later than nine months following the end of the undertaking's financial year.

In order to assess the number of companies covered by this reporting system, Member States shall supply to the Commission a list of the companies and their turnover. The list is to be updated by 31 March of each year.

The rest of the Articles of the Directive (Articles 6 to 9), relate to the treatment of professional secrecy to be given to the information mentioned in Article 5, and to the necessary measures to be taken by Member States to comply with the Directive.