

**DRAFT COMMISSION DIRECTIVE  
AMENDING COMMISSION DIRECTIVE 80/723/EEC ON THE TRANSPARENCY  
OF FINANCIAL RELATIONS BETWEEN MEMBER STATES AND PUBLIC  
UNDERTAKINGS**

**UNICE COMMENTS**

1. INTRODUCTION

UNICE has noted the draft Commission Directive amending Commission Directive 80/723/EEC on the transparency of financial relations between Member States and public undertakings and welcomes the opportunity to give an initial reaction in this important debate.

As a preliminary remark, UNICE believes that Directive 80/723/EEC (hereafter "the Transparency Directive") is a very important instrument to ensure equal treatment of private and public undertakings. In practice, equal opportunity is often challenged because public undertakings receive various benefits. These benefits often constitute state aid, such as direct financial support, but may not always be easily identifiable as state aid, such as the supply of useful information and knowledge, for which a private company would have paid. These benefits can give the undertaking concerned a major competitive advantage.

Having said this, UNICE is pleased that the Commission, in the framework of the Transparency Directive, is now clearly addressing competition problems related to the full or partial opening to competition of sectors that were characterised by the existence of national, regional and local monopolies.

UNICE firmly supports extending the requirements of the Transparency Directive to undertakings to which Member States grant special or exclusive rights and/or which are entrusted with the operation of services of general economic interest, in order to assure fair and effective application of the rules on competition to such undertakings. In undertakings that are active both in partly liberalised and in fully liberalised markets, cross-subsidisation is very likely to occur. Requiring Member States to ensure that these undertakings maintain separate accounts and that costs and revenues are correctly assigned to a company's different activities, is an important means by which cross-subsidisation can be controlled and distortions resolved.

However, UNICE is concerned that the proposed amendments are not sufficiently far-reaching to avoid all cross-subsidisation and counter serious distortions of competition.

UNICE will elaborate further on this issue and other issues below.

## 2. EXCEPTIONS

In Article 4 (2) (b) and 4 (1) (d) of the draft, the Commission excludes from the requirement of the Transparency Directive to maintain separate accounts, undertakings whose total net turnover is less than EUR 40 million and public undertakings whose total net turnover has been less than EUR 40 million over the two financial years preceding that in which public funds are made available or used. Consequently, the requirement to maintain separate accounts is only directed to large enterprises.

UNICE believes though that distortion of competition through cross-subsidisation occurs not only in large undertakings, but is also likely to be found in smaller public undertakings and small and medium-sized companies that enjoy a special or exclusive right granted by a Member State pursuant to Article 86 (1) of the Treaty or that are entrusted with the operation of a service of general economic interest pursuant to Article 86 (2) of the Treaty.

Since maintaining separate accounts is the most efficient means by which fair and effective application of the rules on competition in these cases can be assured, UNICE calls on the Commission to reduce the thresholds of Article 4.

In addition, UNICE does not agree with the Commission that it is not necessary to require undertakings to maintain separate accounts where the special or exclusive rights have been obtained following an open, transparent and non-discriminatory procedure, or where the compensation for the fulfilment of services of general economic interest has been fixed following such an open, transparent and non-discriminatory procedure.

The fact that an open, transparent and non-discriminatory procedure has been followed does not in itself prevent a company from cross subsidising its other activities once it obtained the special or exclusive right or received the compensation. UNICE therefore considers that Article 4 (2) (c) of the draft should be deleted.

## 3. THIRD-PARTY RIGHTS

UNICE has always supported a strengthening of the role played by third parties in the preliminary proceedings as well as the main investigation. Third parties, particularly those active in the same industrial sector, such as competitors, often have good access to relevant information and are well placed to assess the competition effects of state aid.

UNICE would therefore welcome inclusion in the Transparency Directive of provisions aimed at enhancing third-party rights. In addition, it could be clarified in the Directive that third parties have the same rights as provided for in Article 20 of Regulation 659/1999, the Procedural Regulation.

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