COMMISSION DIRECTIVE

of 24 July 1985

amending Directive 80/723/EEC on the transparency of financial relations between Member States and public undertakings

(85/413/EEC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community, and in particular Article 90 (3) thereof,

Whereas Article 4 (b) and (c) of Commission Directive 80/723/EEC [1] excludes from its scope public undertakings carrying on activities in the sectors of water and energy, posts and telecommunications, transport and public credit institutions;

Whereas public undertakings operating in these sectors play an important role in the economies of the Member States; whereas the need for transparency of financial relations between the Member States and public undertakings in certain sectors previously excluded has proved greater than before in view of developments in the competitive situation in the sectors concerned and the progress made towards closer economic integration;

Whereas equal treatment of public and private undertakings must also be ensured in these sectors; whereas in particular transparency of financial relations between the Member States and public undertakings in these sectors must be established for the same reasons and to the same extent as for the undertakings covered by Directive 80/723/EEC;

Whereas the Commission is required by the Treaty to ensure that Member States do not grant undertakings, whether public or private, in the said sectors aids incompatible with the common market;

Whereas the Commission advised the Member States when notifying Directive 80/723/EEC to them that the exclusion of these sectors was only temporary;

Whereas by virtue of Article 232 (1) of the EEC Treaty the provisions of that Treaty shall not affect those of the ECSC Treaty; whereas the ECSC Treaty contains special provisions governing the obligations of Member States as far as public undertakings and aid are concerned; whereas Article 90 of the EEC Treaty is therefore inapplicable to public undertakings carrying on activities coming under the ECSC Treaty;

Whereas by virtue of Article 232 (2) of the EEC Treaty the provisions of that Treaty shall not derogate from those of the Euratom Treaty, but whereas the latter does not contain any special provisions on public undertakings or aid; whereas Article 90 of the EEC Treaty therefore applies to the nuclear energy field;

Whereas the transparency of the Member States' financial relations with public undertakings in the rail, road and inland waterway transport sectors is already regulated to a considerable extent by legislation enacted by the Council; whereas this Directive is without prejudice to that legislation;

Whereas Directive 80/723/EEC contains provisions, particularly in Articles 3 and 5, which may facilitate the Commission's task in meeting the obligations it has assumed under the said Council legislation, in particular as regards the preparation of periodical reports on the performance of those public undertakings;

Whereas the scope of Directive 80/723/EEC should therefore be extended to cover all the transport sector;

Whereas Member States' financial relations with credit institutions belonging to the public sector are also covered by this Directive; whereas, however, the Directive should not apply to Member States' relations with central banks which are responsible for the conduct of monetary policy;

Whereas public authorities often deposit short-term funds with public credit institutions on normal commercial terms; whereas such deposits do not confer special advantages on the credit institutions and should therefore not be covered by the Directive;

Whereas the economic importance of credit institutions does not depend on their turnover but on their balance sheet total; whereas the threshold laid down in Article 4 (d) of Directive 80/723/EEC should therefore be set as far as credit institutions are concerned by reference to that criterion,

[1] OJ No L 195, 29. 7. 1980, p. 35.

HAS ADOPTED THIS DIRECTIVE:

Article 1

Article 4 of Directive 80/723/EEC is hereby replaced by the following:

'Article 4

This Directive shall not apply to financial relations between the public authorities and:

(a) public undertakings, as regard services the supply of which is not liable to affect trade between Member States to an appreciable extent;

(b) central banks and the Institut Monétaire Luxembourgeois;

(c) public credit institutions, as regards deposits of public funds placed with them by public authorities on normal commercial terms;

(d) public undertakings whose total turnover before tax over the period of the two financial years preceding that in which the funds referred to in Article 1 are made available or used has been less than 40 million ECU. However, for public credit institutions the corresponding threshold shall be a balance sheet total of 800 million ECU.'

Article 2

Member States shall take the necessary measures to comply with this Directive by 1 January 1986. They shall inform the Commission thereof.

Article 3

This Directive is addressed to the Member States.

Done at Brussels, 24 July 1985.

For the Commission

Peter SUTHERLAND

Member of the Commission