

EUROPEAN ECONOMIC AREA
STANDING COMMITTEE
OF THE EFTA STATES

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WORKING GROUP ON STATE AID

Comments by the EFTA Working Group on the draft Commission proposal for an amendment of the Commission Directive 80/723/EEC of 25 June 1980 on the transparency of financial relations between Member States and public undertakings

1. The EFTA EEA States have assessed the draft Commission proposal for an amendment of Commission Directive 80/723/EEC of 25 June 1980 on the transparency of financial relations between Member States and public undertakings. It is recalled that Commission Directive 80/723/EEC of 25 June 1980 on the transparency of financial relations between Member States and public undertakings (Transparency Directive) is incorporated into Annex XV to the EEA Agreement.
2. In general, the EFTA EEA States recognise the need for increased transparency with regard to undertakings which render services in the general economic interest while at the same time operating activities in competition with other undertakings. Such a double position can lead to distortion of competition, i.e. payments received from public authorities for compensation of the additional costs of public services could be used to cross-subsidise the activities which are exposed to competition. One way of dealing with this issue is, as the Commission proposes, to introduce additional analytical cost accounting which should reveal the internal cost and cost allocation of these undertakings. However, it is important that the consequences of introducing such a measure be thoroughly considered by the Commission before its adoption. The EFTA EEA States are in general hesitant to the existing proposal and would like to voice the following concerns.
3. Firstly, the draft proposal extends the coverage of the Transparency Directive to undertakings which are engaged in dual operations as specified above. However, it is unclear as to the exact extent of the new coverage. The Directive is based on Article 90(1) and (2) of the EC Treaty (Article 59 (1) and (2) of the EEA Agreement) and, therefore, covers both private and public undertakings which are provided with special rights or entrusted with services in the general economic interest. In the opinion of the EFTA EEA States, this could imply that amendments to the Directive would also cover undertakings which have been granted special rights and compensation in competition with other undertakings. It could further imply that undertakings which, to a very small degree, operate in liberalised markets in competition with other companies, or mainly

operating on a local market, may be covered. It is unclear whether it is the Commission's intention to cover such undertakings or not. The EFTA EEA States therefore consider it necessary for the Commission to provide a clearer definition regarding undertakings to be covered by the proposed amendments to the Directive.

4. Secondly, the introduction of a separate accounting system, as provided for in the proposed amendment, will represent an additional burden on a substantial number of undertakings which have previously not been covered by the Transparency Directive. Furthermore, there will be a number of technical questions in relation to the new demands, as the accounting systems would have to be adapted. Consequently, any new cost accounting system should take these aspects into account and be as simple as possible. This is of particular importance for the EFTA EEA States, since many of the undertakings which will be affected in these States are SME's with limited resources.

5. Finally, the EFTA EEA States consider that some kind of "*de minimis rule*" should also be introduced for "*undertakings subject to analytical accounting*" (Article 1, paragraph 2 of the consolidated directive) in line with the exemptions for "*public undertakings*" in Article 4d of the consolidated directive. Many undertakings in the EEA are either of a negligible size or their "commercial" activities are so small that their presence does not have any effect on competition in the EEA. National laws and regulations should provide sufficient protection for competitors of such undertakings within individual EEA States.

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