

II

(Acts whose publication is not obligatory)

COMMISSION

COMMISSION DIRECTIVE 93/84/EEC

of 30 September 1993

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

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

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

Whereas Commission Directive 80/723/EEC⁽¹⁾, as amended by Directive 85/413/EEC⁽²⁾, introduced a system whereby Member States were placed under an obligation to ensure that financial relations between public authorities and public undertakings are transparent; whereas that Directive required certain financial information to be retained by Member States and supplied to the Commission when requested;

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;

Whereas public undertakings play an important role in the economies of Member States; whereas the need for transparency of financial relations between the Member States and their public undertakings has proved greater than before, on account of developments in the competitive situation in the common market, especially as the Community is moving towards close economic integration and social cohesion;

Whereas the Member States have adopted a Single European Act which in turn has led to the creation of the Single Market with effect from 1 January 1993; whereas this will lead to greater competitive pressures and to a need for the Commission to be vigilant in ensuring that the full benefits of the Single Market are achieved; whereas the Single Market makes it increasingly necessary

to ensure that an equality of opportunity exists between both public and private undertakings;

Whereas it has been established that a significant part of the financial flows between a State and its public undertakings pass through a variety of forms of financial transfers and do not simply take the form of capital or quasi-capital injections;

Whereas it is predominantly in the manufacturing sector that the Commission has established that a considerable amount of aid has been granted to undertakings but not notified pursuant to Article 93 (3) of the Treaty; whereas the first⁽³⁾, second⁽⁴⁾ and third⁽⁵⁾ State aid surveys confirm that large amounts of State aid continue to be granted illegally;

Whereas a reporting system based on *ex post facto* checks of the financial flows between public authorities and public undertakings will enable the Commission to fulfil its obligations; whereas that system of control must cover specific financial information; whereas such information is not always publicly available and, as it is found in the public arena, is insufficiently detailed to allow a proper evaluation of the financial flows between the State and public undertakings;

Whereas all of the information requested can be regarded as being proportional to the objective pursued, taking account of the fact that such information is already subject to the disclosure obligations under the Fourth Council Directive 78/660/EEC⁽⁶⁾ concerning the annual accounts of companies, as last amended by Directive 90/605/EEC⁽⁷⁾;

⁽¹⁾ OJ No L 195, 29. 7. 1980, p. 35.

⁽²⁾ OJ No L 229, 28. 8. 1985, p. 20.

⁽³⁾ ISBN 92-825-9535.

⁽⁴⁾ ISBN 9-826-0386.

⁽⁵⁾ ISBN 92-826-4637.

⁽⁶⁾ OJ No L 222, 14. 8. 1978, p. 11.

⁽⁷⁾ OJ No L 317, 16. 11. 1990, p. 60.