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Press and Information

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Judgment of the Court of Justice in Case C-349/03

Commission of the European Communities v. United Kingdom of Great Britain and Northern Ireland

BY EXCLUDING GIBRALTAR FROM PART OF THE SCOPE OF THE DIRECTIVE ON MUTUAL ASSISTANCE IN THE FIELD OF TAXATION, THE UNITED KINGDOM HAS FAILED TO FULFIL ITS COMMUNITY OBLIGATIONS

The territory of Gibraltar does not fall outside the requirement of mutual assistance by the competent authorities of the Member States in the fields of VAT and excise duties

A 1977 directive¹, in its original version, concerned mutual assistance by the competent authorities of the Member States in the field of direct taxation. Two later directives² extended its scope to value added tax (VAT) and certain excise duties.

The Act of Accession of the United Kingdom³ provides that Community acts on the harmonisation of legislation of Member States concerning turnover taxes are not to apply to Gibraltar. It also excludes the territory of Gibraltar from the Community customs territory⁴. On that basis, the United Kingdom took the view that the provisions of the directive on VAT and excise duties do not apply to that territory.

The Commission is of the opinion, however, that Gibraltar cannot fall outside those provisions and brought an action before the Court of Justice of the European Communities.

¹ Council Directive 77/799/EEC of 19 December 1977 concerning mutual assistance by the competent authorities of the Member States in the field of direct and indirect taxation (OJ 1977 L 336, p. 15), as amended by Council Directive 79/1070/EEC of 6 December 1979 (OJ 1979 L 331, p. 8) and by Council Directive 92/12/EEC of 25 February 1992 on the general arrangements for products subject to excise duty and on the holding, movement and monitoring of such products (OJ 1992 L 76, p.1).

² Directive 79/1070 and Directive 92/12.

³ Article 28 of the Act of Accession.

⁴ Article 29 of the Act of Accession, in conjunction with Annex I, Section I, point 4 thereto.

VAT

The Court finds that the relevant exception to the application of Community law in the territory of the European Community must be given an interpretation which limits its scope to that which is **strictly necessary** to safeguard Gibraltar's interests.

Provisions which **merely require cooperation between the Member States**, leaving each of them to use their own methods of enquiry and communication of information, are not 'acts on the harmonisation of legislation of Member States concerning turnover taxes'. The amended directive refers to the limits to exchange of information arising from the laws or administrative practices of the Member State concerned and does not go beyond that cooperation.

Excise duties

The exclusion of Gibraltar from the Community customs territory **does not mean that Gibraltar falls outside the requirement of mutual assistance** by the competent authorities of the Member States in that field. The fact that the Gibraltar authorities are subject to that requirement has no bearing on any non-application to that territory of provisions requiring harmonisation of those duties as such.

Accordingly, the Court has held that, by failing to implement that directive in the territory of Gibraltar in the fields of VAT and excise duties, the **United Kingdom has failed to fulfil its obligations** under the EC Treaty.

Unofficial document for media use, not binding on the Court of Justice.

Languages available: DE, EN, FR

The full text of the judgment may be found on the Court's internet site

<http://curia.eu.int/jurisp/cgi-bin/form.pl?lang=en>

It can usually be consulted after midday (CET) on the day judgment is delivered.

For further information, please contact Christopher Fretwell

Tel: (00352) 4303 3355 Fax: (00352) 4303 2731