

## Case C-349/03

**Commission of the European Communities**

**v**

**United Kingdom of Great Britain and Northern Ireland**

(Failure of a Member State to fulfil obligations — Directive 77/799/EEC — Mutual assistance by the competent authorities — Fields of VAT and excise duties — Partial transposition — Territory of Gibraltar)

Opinion of Advocate General Tizzano delivered on 10 March 2005 . . . . . I - 7323  
Judgment of the Court (Grand Chamber), 21 July 2005 . . . . . I - 7336

### Summary of the Judgment

*Approximation of laws — Mutual assistance by the authorities of the Member States in the field of direct and indirect taxation — Directive 77/799 — Fields of value added tax and excise duties — Application to the territory of Gibraltar — Failure to fulfil obligations (Act of Accession of 1972, Arts 28 and 29; Council Directive 77/799)*

Under Article 28 of the Act of Accession of the Kingdom of Denmark, Ireland and the United Kingdom of Great Britain and Northern Ireland, the acts of the institutions of the Community on the harmonisation of legislation of Member States concerning turnover taxes are not to apply to Gibraltar, unless the Council, acting unanimously on a proposal from the Commission, provides otherwise. Provisions which merely require cooperation between the Member States, leaving each of them to use their own methods of enquiry and communication of information, cannot be regarded as such acts.

That is true of Directive 77/799 concerning mutual assistance by the competent authorities of the Member States in the field of direct and indirect taxation, as amended by Directive 79/1070 and by Directive 92/12 on the general arrangements for products subject to excise duty and on the holding, movement and monitoring of such products. That directive, in so far as it concerns value added tax, is not therefore one of the 'acts on the harmonisation of legislation of Member States concerning turnover taxes' within the meaning of Article 28 of the Act of Accession and does therefore apply to Gibraltar.

In so far as it concerns excise duties, Directive 77/799 as amended also applies to Gibraltar. Any non-application to that territory of provisions requiring harmonisation of those duties as such, under Article 29 of the Act of Accession in conjunction with Annex I, Section I, point 4, thereto, which provides that Gibraltar does not form part of the Community customs territory, does not mean, in any event, that Gibraltar falls outside the requirement of mutual assistance by the competent authorities of the Member States provided for by Directive 77/799 as amended in the field of excise duties.

It follows that, by failing to implement in the territory of Gibraltar, in the fields of value added tax and excise duties, Directive 77/799 as amended, the United Kingdom has failed to fulfil its obligations under the EC Treaty.

(see paras 42, 44-46, 50-51, 53-54, 56, operative part)