

ARCHIVES HISTORIQUES DE LA COMMISSION

COLLECTION RELIEE DES
DOCUMENTS "COM"

COM (85) 267

Vol. 1985/0119

Historical Archives of the European Commission

Disclaimer

Conformément au règlement (CEE, Euratom) n° 354/83 du Conseil du 1er février 1983 concernant l'ouverture au public des archives historiques de la Communauté économique européenne et de la Communauté européenne de l'énergie atomique (JO L 43 du 15.2.1983, p. 1), tel que modifié par le règlement (CE, Euratom) n° 1700/2003 du 22 septembre 2003 (JO L 243 du 27.9.2003, p. 1), ce dossier est ouvert au public. Le cas échéant, les documents classifiés présents dans ce dossier ont été déclassifiés conformément à l'article 5 dudit règlement.

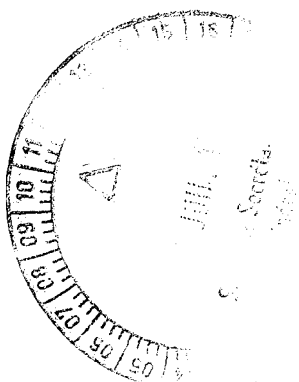
In accordance with Council Regulation (EEC, Euratom) No 354/83 of 1 February 1983 concerning the opening to the public of the historical archives of the European Economic Community and the European Atomic Energy Community (OJ L 43, 15.2.1983, p. 1), as amended by Regulation (EC, Euratom) No 1700/2003 of 22 September 2003 (OJ L 243, 27.9.2003, p. 1), this file is open to the public. Where necessary, classified documents in this file have been declassified in conformity with Article 5 of the aforementioned regulation.

In Übereinstimmung mit der Verordnung (EWG, Euratom) Nr. 354/83 des Rates vom 1. Februar 1983 über die Freigabe der historischen Archive der Europäischen Wirtschaftsgemeinschaft und der Europäischen Atomgemeinschaft (ABl. L 43 vom 15.2.1983, S. 1), geändert durch die Verordnung (EG, Euratom) Nr. 1700/2003 vom 22. September 2003 (ABl. L 243 vom 27.9.2003, S. 1), ist diese Datei der Öffentlichkeit zugänglich. Soweit erforderlich, wurden die Verschlussachen in dieser Datei in Übereinstimmung mit Artikel 5 der genannten Verordnung freigegeben.

COMMISSION OF THE EUROPEAN COMMUNITIES

COM(85) 267 final

Brussels, 4 June 1985



COMMISSION COMMUNICATION TO THE COUNCIL

Application of Article 27 (1) to (4) of the Sixth Council Directive of 17 May 1977 on value added tax to a request for derogation submitted by the United Kingdom Government

COM(85) 267 final

Commission Communication to the Council concerning the application of Article 27 of the Sixth Council Directive of 17 May 1977 on value added tax (1) to a request for derogation submitted by the United Kingdom Government

1. On 15 March 1985, the United Kingdom Government informed the Commission, pursuant to the above provisions, of its intention to introduce a measure derogating from the Sixth Directive.
2. This derogation, limited to a period of two years, is intended to avoid tax evasion by introducing a system for the application of VAT in cases where the marketing structure of certain firms is based upon the sale of their products to unregistered resellers.
3. The Commission informed the other Member States, by letter dated 12 April 1985, of the request submitted by the United Kingdom Government.
4. In accordance with Article 27(4) of the Sixth Directive, the Council's decision will be deemed to have been adopted if, within two months of the other Member States being informed, as described at 3 above, neither the Commission nor any Member State has requested that the matter be raised by the Council.
5. Provided that the derogation proposed by the United Kingdom Government is restricted to the measures mentioned in paragraph 2 of this Communication, the Commission does not intend to ask for the matter to be raised by the Council.
6. The Commission requests the Council to publish the text of paragraphs 1 to 3 of this Communication in the Official Journal together with its decision.

Annex 1

(1) OJ No L 145, 13.6.1977

SIXTH VAT DIRECTIVE : NOTIFICATION BY THE UNITED KINGDOM OF A SPECIAL MEASURE UNDER ARTICLE 27 OF THE SIXTH VAT DIRECTIVE (77/388/EEC)

1. Article 27 provides for Member States to introduce special measures to prevent certain types of tax evasion or abuse. Such measures must be authorized by the Council after notification to the Commission under Article 27.2. The United Kingdom hereby notifies the Commission that it needs to introduce, as a matter of urgency, such a special measure as detailed below.
2. In the United Kingdom certain companies, in the field of cosmetics for example, sell their products solely to retail dealers who are not required to be registered for VAT and are therefore outside the tax net. While these companies and dealers do not seek to evade payment of tax, the effect of their marketing structure is that tax on the value added by the dealer to the final consumer is avoided. Other companies selling similar products in direct competition and selling through normal registered retail outlets are therefore at a competitive disadvantage because the price of their products to the final consumer bears additional VAT.
3. Until 1981, the Commissioners of Customs and Excise had power to prevent this avoidance of tax on the retail margin, by requiring sales to unregistered individuals, for onward resale by them, to be taxed on their retail value. The power was contained in paragraph 2 of Schedule 3 to the Finance Act 1972, as amended by the Finance Act 1977. The provisions were notified to the Commission in 1977 under paragraph 5 of Article 27 as an existing special measure of the type referred to in paragraph 1 of Article 27.
4. The text of the provisions notified to the Commission was further amended by Section 14(1) of the Finance Act 1981 and in their judgment of 13 February 1985 in the case of *Direct Cosmetics Ltd v The Commissioners of Customs and Excise* (Case 5/84), the European Court of Justice found that the 1981 amendment constituted a new special measure requiring notification to the Commission under paragraph 2 of Article 27.
5. The provisions, the subject of this notification, are now in the Value Added Tax Act 1983, at paragraph 3 of Schedule 4 to the Act which states:

"3. Where -

- (a) the whole or part of a business carried on by a taxable person consists in supplying to a number of persons goods to be sold whether by them or others, by retail, and
- (b) those persons are not taxable persons,

the Commissioners may by notice in writing to the taxable person direct that the value of any such supply by him after the giving of the notice or after such later date as may be specified in the notice shall be taken to ^{be} its open market value on a sale by retail."

6. The United Kingdom submits that this special measure is fully in accordance with the provisions of Article 27.1. Its use will be confined to companies in a substantial way of business operating in the manner described. Such companies sell products which are normally distributed to the market place through VAT registered retailers and which thus bear an additional burden of tax which also places them at a competitive disadvantage. The measure will not be applied to other wholesalers selling to unregistered retailers.

7. The United Kingdom further submits that it requires the special measure to be in force for a period of two years. During that period the United Kingdom undertakes to examine its national law in relation to valuation for VAT purposes to determine whether the objectives of the special measure may be achieved by other means fully consistent with the provisions of the Sixth VAT Directive, possibly by alignment with Article 4.4 thereof.