



GOVERNMENT OF THE CAYMAN ISLANDS

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Press Statement by
the Leader of Government Business, the Hon. W. McKeeva Bush, OBE, JP
on
the preliminary ruling from the Court of First Instance of the European
Communities

11:00 a.m. Friday 28th March 2003

On 17 March 2003 representatives of the Cayman Islands Government attended the European Union's Court of First Instance in Luxembourg for what was essentially a preliminary matter. This preliminary matter was an application for interim relief prior to the hearing of the main application by the Cayman Islands which relates to a request from the Cayman Islands for the European Commission to establish and convene a Partnership Working Party. No date has yet been fixed for the main application. Partnership Working Parties provide a mechanism for dialogue among the European Commission, European Union Member States and Overseas Territories such as the Cayman Islands.

The principal objectives in bringing the 17 March 2003 application for interim relief before The Court of First Instance were:

1. To assist in establishing that the position of the Cayman Islands, which is that the European Commission is obliged to establish and convene a Partnership Working Party at the request of the Cayman Islands, is legally correct and to challenge the European Commission's refusal and delay in setting up a Partnership Working Party to discuss the potential implications of the Savings Directive on the Cayman Islands;
2. To require the European Commission to state its position with respect to the legality of any potential direct application by the European Union of the proposed directive on the taxation of savings income to the Cayman Islands and thereby to determine the most

appropriate position to take should the proposed directive be adopted and implemented by the European Union Member States at some point in the future. Further, in the event that the proposed directive could, contrary to the arguments of the Cayman Islands, be directly applied to the Cayman Islands, then;

3. To require the European Commission to withdraw its proposed directive for the taxation of savings income from the European Council prior to the ECOFIN meetings of 7 March 2003 and 19 March 2003 in order to allow for discussions to occur in the context of the Partnership Working Party.

Four days prior to the 17 March 2003 hearing, having read the arguments of the Cayman Islands which were submitted to the Court of First Instance, the European Commission formally acknowledged to the Court and the Government of the Cayman Islands that the proposed directive on the taxation of savings income could not be imposed directly by the European Union on the Cayman Islands. In its judgment which was obtained by the Government late on 26 March 2003, the Court of First Instance agreed with this interpretation and confirmed that the European Union could not directly impose any obligation on the Cayman Islands to implement the proposed directive on the taxation of savings income.

Having found that the proposed directive could not legally be imposed directly on the Cayman Islands by the European Union, and that therefore the Cayman Islands would not be directly affected by events at the European Council meeting of 19 March 2003 and as the passage of time had rendered some of the requests of the Cayman Islands relative to the prior meeting of 7 March 2003 of no further relevance, The Court of First Instance found that it was unnecessary to grant the withdrawal of the proposed directive sought by the Cayman Islands prior to the hearing of the main action.

The decision of the Court of First Instance further confirmed that in the event that the proposed directive is ultimately agreed within the European Union in its current form, then it would not be credible for the United Kingdom as a Member State of the European Union to argue that the United Kingdom was legally required by the directive to impose “the same measures” on the Cayman Islands.

The Court of First Instance also noted that the proposed directive is a fiscal measure, a classification which carries with it a connotation which is favourable to the position of the Cayman Islands from a constitutional perspective.

Further, based on the findings noted above, although the presiding judge was not obliged to indicate that the 2001 OCT Decision made it mandatory for the European Commission to establish a Partnership Working Party, it is clear that The Court of First Instance was receptive to the position of the Cayman Islands that such an establishment of a Working Party was mandatory.

Finally, the judge noted that as a matter of European Community law, any European Union intergovernmental agreement, (such as the undertaking given by the United Kingdom’s Chancellor of the Exchequer to ECOFIN in December 2002 to the effect that the United Kingdom would ensure that the Cayman Islands would implement the proposed directive), was

unenforceable. The judge also noted that any damage caused to the Cayman Islands by the imposition of the proposed directive on the Cayman Islands by the United Kingdom would be the result of the UK's actions and not those of the European Union.

-ENDS-

NOTES TO EDITORS

1. The Cayman Islands matter was heard by the President of the Court of First Instance.
2. The text of the decision will, in accordance with the normal procedures of the Court of First Instance, be published by the Court in due course.
3. The Cayman Islands was represented by Eleanor Sharpston QC and instructing solicitors in London were Sidley Austin Brown and Wood. Support in London and Luxembourg was provided by Christopher Rose, David Ritch and Deborah Drummond. Mr Ramon Alberga QC has also been assisting in Cayman.
4. The savings directive is still in draft and has no final text has been adopted by the EU Council of Ministers. It is the Cayman Islands Government's understanding that the next scheduled meeting of this Council is in May.