Case C-408/95

Eurotunnel SA and Others
v
SeaFrance, formerly Société Nouvelle d'Armement Transmanche SA (SNAT)

(Reference for a preliminary ruling from the Tribunal de Commerce, Paris)

(Transitional arrangements for tax-free shops — Council Directives 91/680/EEC and 92/12/EEC — Assessment of validity)

Summary of the Judgment

1. *Acts of the institutions — Directives — Possibility for a natural or legal person to challenge before a national court the validity of provisions in directives without having brought an action for annulment of those provisions — Provisions addressed in general terms to Member States and not directly applicable — Right of a natural or legal person to raise the question before the national court*

   (EC Treaty, Art. 173; Council Directives 77/388, Art. 28k, inserted by Directive 91/680, Art. 1(22), and 92/12, Art. 28)

2. *Acts of the institutions — Procedure by which they are drawn up — Due consultation of the Parliament — Essential procedural requirement — Fresh consultation where the Commission's original proposal has been substantially amended — Substantial amendment — Criteria — Amendment corresponding to the wishes of the Parliament — Criteria*

(Council Directives 77/388, Art. 28k, inserted by Directive 91/680, Art. 1(22), and 92/12, Art. 28)

1. A natural or legal person may challenge before a national court the validity of provisions in directives, such as Article 1(22) of Directive 91/680 supplementing the common system of value added tax and amending Directive 77/388 with a view to the abolition of fiscal frontiers and Article 28 of Directive 92/12 on the general arrangements for products subject to excise duty and on the holding, movement and monitoring of such products, even though that person has not brought an action for annulment of those provisions pursuant to Article 173 of the Treaty and even though a court of another Member State has already given judgment in separate proceedings.

With respect to the validity of provisions in Community directives which are addressed in general terms to Member States and not to natural or legal persons, and which are not directly applicable to the operators concerned, it is not obvious that an action challenging those provisions under Article 173 of the Treaty would have been admissible. As regards the decision of a court of another Member State, it is not for the Court of Justice, in the procedure provided for in Article 177 of the Treaty, to assess the need for a preliminary ruling by reference to the judgment on a similar question given in separate proceedings by a court of another Member State.

2. The requirement to consult the Parliament in the legislative procedure, in the cases provided for by the Treaty, means that it must be consulted again whenever the text finally adopted, taken as a whole, differs in essence from the text on which the Parliament has already been consulted, except in cases in which the amendments substantially correspond to the wishes of the Parliament itself.

With respect to the proposals for Directives 91/680 and 92/12, the purpose of which was to adjust the systems of value added tax and excise duty to the existence of an internal market, it was not necessary for the Parliament to be consulted again on Articles 1(22) of Directive 91/680 and 28 of Directive 92/12.

The object of those provisions, which authorize Member States to exempt supplies of tax-free shops within certain limits for a period ending on 30 June 1999, is to permit a pre-existing system to be maintained if the Member States so wish, and they must be interpreted as optional exceptions of limited scope to Directives 91/680 and 92/12, and thus cannot be classed as changes in the essence of the measures.

Moreover, by deciding to maintain the option for Member States to exempt tax-free sales for a transitional period, the Council responded in substance to the wishes of the Parliament, which not only had an opportunity to express its opinion on the question of tax-free sales but recommended that they should be maintained, in that in its opinion on Directive 91/680 it had proposed amendments which were entirely compatible with the tenor of the final text of the directive, and in its opinion on Directive 92/12 it proposed that the derogating arrangements in force for sales free of excise duty should temporarily be maintained until 31 December 1995.