

COUNCIL DIRECTIVE 96/99/EC**of 30 December 1996****amending Directive 92/12/EEC on the general arrangements for products subject to excise duty and on the holding, movement and monitoring of such products**

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 99 thereof,

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Parliament⁽¹⁾,

Whereas the Economic and Social Committee, having been consulted on the Commission proposal, did not deliver its opinion within the time limit set by the Council pursuant to Article 198 of the Treaty; whereas it is appropriate to disregard the fact that the said Committee delivered no opinion;

Whereas Directive 92/12/EEC⁽²⁾ lays down the general arrangements for the holding, movement and monitoring of products subject to excise duty;

Whereas Article 26 of that Directive provides a derogation permitting Denmark to apply excise duty to alcoholic drinks and tobacco products exceeding certain quantities when they are brought into its territory by private individuals who import them for their own use;

Whereas the 1994 Act of Accession provides, also by reference to Article 26 of Directive 92/12/EEC, that Sweden and Finland may apply excise duty to a more extensive list of alcohol drinks and tobacco products under the same conditions;

Whereas the derogations so provided for were accorded because in a Europe without frontiers where excise rates vary widely, an immediate total removal of excise limitations would have caused an unacceptable diversion of trade and revenue and distortion of competition in the Member States concerned, which have traditionally applied high excise duties to the products concerned both as an important source of revenue and for health and social reasons;

Whereas the derogations were granted until 31 December 1996 and subject to a review mechanism similar to that laid down in Article 281 of Directive 77/388/EEC⁽³⁾;

Whereas, however, on 31 December 1996, minimum rates of excise duty applied throughout the Community will be

lower than was expected when the derogations were accorded, so that their abolition on that date will cause greater problems than had been envisaged;

Whereas, therefore, it is appropriate to provide further time for adjustment in Denmark, Finland and Sweden by extending the date laid down in Article 26 of Directive 92/12/EEC;

Whereas, however, the provisions of Article 26 represent a derogation from a fundamental principle of the internal market, namely the right of its citizens to transport goods purchased for their own use throughout the Community without incurring liability to new duty charges, so that it is necessary to limit its effects as far as possible;

Whereas it is therefore appropriate, in the case of Denmark and Finland, to provide, on the one hand, for the gradual liberalization of the quantitative restrictions which may be applied prior to their complete removal on 31 December 2003 and, on the other hand, to reduce from 36 hours to 24 hours the qualifying period which requires a minimum stay outside the territory of the Member State concerned before residents may benefit from any allowance;

Whereas, the Member States concerned may decide upon the precise details of the liberalization process in the light of all relevant factors;

Whereas, however, the process should be subject to monitoring not later than 30 June 2000;

Whereas, in the case of Sweden, it is appropriate to authorize the continuation of the present restrictions until 30 June 2000 and subject to a review mechanism similar to that laid down in Article 281 of Directive 77/388/EEC;

Whereas Article 1 (2) of Council Regulation (EEC) No 3925/91 of 19 December 1991 concerning the elimination of controls and formalities applicable to the cabin and hold baggage of persons taking an intra-Community flight and the baggage of persons making an intra-Community sea-crossing⁽⁴⁾ states that its enforcement is without prejudice to checks linked to prohibitions or restrictions laid down by the Member States, provided that

⁽¹⁾ Opinion delivered on 13 December 1996 (not yet published in the Official Journal)

⁽²⁾ OJ No L 76, 23. 3. 1992, p. 1. Directive as last amended by Directive 94/74/EC (OJ No L 365, 31. 12. 1994, p. 46).

⁽³⁾ OJ No L 145, 13. 6. 1977, p. 1. Directive as last amended by Directive 95/7/EC (OJ No L 102, 9. 5. 1995, p. 18).

⁽⁴⁾ OJ No L 374, 31. 12. 1991, p. 4.

they are compatible with the three Treaties establishing the European Communities; whereas, in that context, the verifications necessary for the enforcement of the quantitative restrictions referred to in Article 26 of Directive 92/12/EEC must be considered to be such controls and, as such, to be compatible with Community legislation,

HAS ADOPTED THIS DIRECTIVE:

Article 1

Article 26 of Directive 92/12/EEC shall be replaced by the following:

Article 26

1. Without prejudice to Article 8, until 31 December 2003, Denmark and Finland shall be authorized to apply the specific arrangements laid down in the second and third subparagraphs to certain alcoholic drinks and tobacco products brought into their territory by private individuals for their own use.

From 1 January 1997, Denmark and Finland shall be authorized to continue to apply the same restrictions on the quantity of goods which may be brought into their territories without further excise duty payment as they applied on 31 December 1996. Those restrictions shall be progressively removed by these Member States.

Where such goods are imported by persons resident within their territories, Denmark and Finland shall be authorized to restrict the grant of admission without payment of duty to persons who have been absent from their territory for a period of more than 24 hours.

2. Before 30 June 2000, the Commission shall report to the European Parliament and the Council on the operation of paragraph 1.

3. Without prejudice to Article 8, from 1 January 1997 to 30 June 2000, and subject to a review mech-

anism similar to that laid down in Article 281 of Directive 77/388/EEC, Sweden shall be authorized to continue to apply the same restrictions as it applied on 31 December 1996 on the quantity of alcoholic drinks and tobacco products which may be brought into Swedish territory without further excise duty payment by private individuals for their own use.

4. Denmark, Finland and Sweden may collect excise duties and carry out the necessary checks with respect to the products covered by this Article.'

Article 2

1. Member States shall bring into force the laws regulations and administrative provisions necessary to comply with this Directive not later than 1 January 1997. They shall forthwith inform the Commission thereof.

When Member States adopt these measures, they shall contain a reference to this Directive or shall be accompanied by such reference on the occasion of their official publication. The methods of making such reference shall be laid down by the Member States.

2. Member States shall communicate to the Commission the texts of the main provisions of national law which they adopt in the field covered by this Directive.

Article 3

This Directive shall enter into force on 1 January 1997.

Article 4

This Directive is addressed to the Member States.

Done at Brussels, 30 December 1996.

For the Council

The President

S. BARRETT