

COUNCIL DIRECTIVE 94/76/EC

of 22 December 1994

amending Directive 77/388/EEC by the introduction of transitional measures applicable, in the context of the enlargement of the European Union on 1 January 1995, as regards value added tax

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the 1994 Accession Treaty, and in particular Articles 2 and 3 thereof, and the 1994 act of Accession, and in particular Article 169 thereof,

Having regard to the proposal from the Commission,

Whereas, subject to the special provisions set out in Chapter IX of Annex XV to the Act of Accession, the common system of value added tax is to apply to the new Member States as from the date on which the Accession Treaty enters into force;

Whereas, as a result of the abolition on that date of the imposition of tax on importation and remission of tax on exportation in trade between the Community as constituted at present and the new Member States, and between the new Member States themselves, transitional measures are necessary to safeguard the neutrality of the common system of value added tax and prevent situations of double taxation or non-taxation;

Whereas such measures must, in this respect, meet concerns akin to those that led to the measures adopted on completion of the internal market on 1 January 1993, and in particular the provisions of Article 28n of Council Directive 77/388/EEC of 17 May 1977 on the harmonization of the laws of the Member States relating to turn-over taxes — Common system of value added tax: uniform basis of assessment ⁽¹⁾;

Whereas, in the customs sphere, goods will be deemed to be in free circulation in the enlarged Community where it is shown that they were in free circulation in the current Community or in one of the new Member States at the time of accession; whereas conclusions should be drawn from this, particularly for Article 7 (1) and (3) and Article 10 (3) of Directive 77/388/EEC;

Whereas it is necessary in particular to cover situations in which goods have been placed, prior to accession, under one of the arrangements referred to in Article 16 (1) (B) (a) to (d), under a temporary admission procedure with

full exemption from import duties or under a similar procedure in the new Member States;

Whereas it is also necessary to lay down specific arrangements for cases where a special procedure (export or transit), initiated prior to the entry into force of the Accession Treaty in the framework of trade between the current Community and the new Member States and between those Member States for the purposes of a supply effected prior to that date by a taxable person acting as such, is not terminated until after the date of accession,

HAS ADOPTED THIS DIRECTIVE:

Article 1

In Directive 77/388/EEC, the following Title and Article shall be inserted:

'TITLE XVIc

Transitional measures applicable in the context of the accession to the European Union of Austria, Finland and Sweden

Article 28p

1. For the purpose of applying this Article:

- 'Community' shall mean the territory of the Community as defined in Article 3 before accession,
- 'new Member States' shall mean the territory of the Member States acceding to the European Union by the Treaty signed on 24 June 1994, as defined for each of those Member States in Article 3 of this Directive,
- 'enlarged Community' shall mean the territory of the Community as defined in Article 3, after accession.

2. When goods:

- entered the territory of the Community or of one of the new Member States before the date of accession, and
- were placed, on entry into the territory of the Community or of one of the new Member States,

⁽¹⁾ OJ No L 145, 13. 6. 1977, p. 1. Directive as last amended by Directive 94/5/EC (OJ No L 60, 3. 3. 1994, p. 16).

under a temporary admission procedure with full exemption from import duties, under one of the regimes referred to in Article 16 (1) (B) (a) to (d) or under a similar regime in one of the new Member States, and

- have not left that regime before the date of accession,

the provisions in force at the moment the goods were placed under that regime shall continue to apply until the goods leave this regime, after the date of accession.

3. When goods:

- were placed, before the date of accession, under the common transit procedure or under another customs transit procedure, and
- have not left that procedure before the date of accession,

the provisions in force at the moment the goods were placed under that procedure shall continue to apply until the goods leave this procedure, after the date of accession.

For the purposes of the first indent, 'common transit procedure' shall mean the measures for the transport of goods in transit between the Community and the countries of the European Free Trade Association (EFTA) and between the EFTA countries themselves, as provided for in the Convention of 20 May 1987 on a common transit procedure ⁽¹⁾.

4. The following shall be deemed to be an importation of goods within the meaning of Article 7 (1) where it is shown that the goods were in free circulation in one of the new Member States or in the Community:

- (a) the removal, including irregular removal, of goods from a temporary admission procedure under which they were placed before the date of accession under the conditions set out in paragraph 2;
- (b) the removal, including irregular removal, of goods either from one of the regimes referred to in Article 16 (1) (B) (a) to (d) or from a similar regime under which they were placed before the date of accession under the conditions set out in paragraph 2;
- (c) the termination of one of the procedures referred to in paragraph 3 which was started before the date of accession in one of new Member States for the purposes of a supply of goods for consideration

effected before that date in that Member State by a taxable person acting as such;

- (d) any irregularity or offence committed during one of the procedures referred to in paragraph 3 under the conditions set out at (c).

5. The use after the date of accession within a Member State, by a taxable or non-taxable person, of goods supplied to him before the date of accession within the Community or one of the new Member States shall also be deemed to be an importation of goods within the meaning of Article 7 (1) where the following conditions are met:

- the supply of those goods has been exempted, or was likely to be exempted, either under Article 15 (1) and (2) or under a similar provision in the new Member States,
- the goods were not imported into one of the new Member States or into the Community before the date of accession.

6. In the cases referred to in paragraph 4, the place of import within the meaning of Article 7 (3) shall be the Member State within whose territory the goods cease to be covered by the regime under which they were placed before the date of accession.

7. By way of derogation from Article 10 (3), the importation of goods within the meaning of paragraphs 4 and 5 of this Article shall terminate without the occurrence of a chargeable event when:

- (a) the imported goods are dispatched or transported outside the enlarged Community; or
- (b) the imported goods within the meaning of paragraph 4 (a) are other than means of transport and are redispached or transported to the Member State from which they were exported and to the person who exported them; or
- (c) the imported goods within the meaning of paragraph 4 (a) are means of transport which were acquired or imported before the date of accession in accordance with the general conditions of taxation in force on the domestic market of one of the new Member States or of one of the Member States of the Community and/or have not been subject, by reason of their exportation, to any exemption from, or refund of, value added tax.

This condition shall be deemed to be fulfilled when the date of the first use of the means of transport was before 1 January 1987 or when the amount of tax due by reason of the importation is insignificant.

⁽¹⁾ OJ No L 226, 13. 8. 1987, p. 2.

Article 2

1. Subject to the entry into force of the 1994 Accession Treaty, Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive on the date of entry into force of this Directive. They shall forthwith inform the Commission thereof.

When Member States adopt those provisions, 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 a reference shall be laid down by the Member States.

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

Article 3

This Directive shall enter into force on the same date as the 1994 Accession Treaty.

Article 4

This Directive is addressed to the Member States.

Done at Brussels, 22 December 1994.

For the Council

The President

H. SEEHOFER
