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COUR DE JUSTICE DES COMMUNAUTÉS EUROPÉENNES
CÚIRT BHREITHIÚNAIS NA gCÓMHPHOBAL EORPACH
CORTE DI GIUSTIZIA DELLE COMUNITÀ EUROPEE
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POS BENDRIJŲ TEISINGUMO TEISMAS
İRÓPAI KÖZÖSSÉGEK BÍRÓSÁGA
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HOF VAN JUSTITIE VAN DE EUROPESE GEMEENSCHAPPEN
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Press and Information

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Judgment of the Court of Justice in Case C-5/05

Staatssecretaris van Financiën v. B.F. Joustra

**ONLY PRODUCTS ACQUIRED AND TRANSPORTED PERSONALLY BY
PRIVATE INDIVIDUALS ARE EXEMPT FROM EXCISE DUTY IN THE MEMBER
STATE OF IMPORTATION**

Products which are not held for private purposes must necessarily be regarded as being held for commercial purposes for the application of the Directive on excise duty

The Directive on the general arrangements for products subject to excise duty and on the holding, movement and monitoring of such products¹ exempts products acquired by private individuals for their own use and transported by them from excise duty in the Member State of importation.

The Hoge Raad der Nederlanden (Supreme Court of the Netherlands) seeks an interpretation of certain provisions in that directive from the Court of Justice of the European Communities. In the present case, some 70 private individuals formed a group called the ‘Cercle des Amis du Vin’. Each year, on behalf of the circle, Mr Joustra orders wine in France for his own use and that of the other members of the group. On his instructions, that wine is then collected by a Netherlands transport company which transports it to the Netherlands and delivers it to Mr Joustra’s home. The wine is stored there for a few days before being delivered to the other members of the circle. Mr Joustra pays for the wine and the transport and each member of the group then reimburses him for the cost of the quantity of wine delivered to that member and a share of the transport costs calculated in proportion to that quantity. Mr Joustra does not engage in that activity on a commercial basis or with a view to making a profit.

¹ Council Directive 92/12/EEC of 25 February 1992 (OJ 1992 L 76, p. 1), as amended by Council Directive 92/108/EEC of 14 December 1992 (OJ 1992 L 390, p. 124).

The wine ordered by Mr Joustra was released for consumption in France and excise duty was paid in that Member State. The quantity of wine delivered to each member of the circle did not exceed the maximum quantities laid down by the Directive as a guideline for determining whether the products are intended for commercial purposes, namely 90 litres of wine, of which no more than 60 litres may be sparkling wine.

The Netherlands tax authorities levied excise duty of EUR 906.20 on that wine. Mr Joustra disputes liability for that excise duty. In his opinion, the words ‘transported by them’ in the Directive do not prevent it from being interpreted as meaning that the charging of excise duty in the Member State of destination is precluded where a private individual himself purchases, in another Member State, products subject to excise duty and arranges for those products to be transported, under his instructions and on his account, to the Member State of destination by a third party.

The Court points out that, in order for products to be exempt from excise duty in the State of importation, **the Directive requires that those products be intended for the personal use of the private individual who has acquired them and that it therefore excludes products acquired by a private individual for the use of other private individuals. Furthermore, the products in question must be transported personally by the private individual who purchased them.** Were this not so, the effect, for the competent authorities of the Member States, would be an increased risk of fraud as the transport of products covered by the exemption requires no documentation.

In that connection, the Court is not convinced by the Commission’s argument that such an interpretation would be a retrograde step for the citizens of the European Union as against the situation which prevailed before the Directive entered into force in so far as, inter alia, small consignments which were not of a commercial nature from one private individual to another were exempt from excise duty in the State of importation. **If the Directive contains a lacuna in this regard, it is for the Community legislature to remedy it, if necessary.** This is confirmed by the fact that a proposed amendment to the Directive has in fact been submitted by the Commission to the Council of the European Union for the purpose, inter alia, of extending the benefit of the exemption to products transported on behalf of private individuals.

The Court also points out that the Directive is based on the idea that products which are not held for private purposes must necessarily be regarded as being held for commercial purposes. Where excise duty is levied in the Member State in which the products are being held for commercial purposes, although they have already been released for consumption in another Member State, the excise duty paid in that other Member State is to be reimbursed.

Unofficial document for media use, not binding on the Court of Justice.

Languages available: FR CS DA DE EN ES EL FI HU IT NL PL PT SK SL SV

The full text of the judgment may be found on the Court's internet site
<http://curia.europa.eu/jurisp/cgi-bin/form.pl?lang=EN&Submit=rechercher&numaff=C-5/05>

It can usually be consulted after midday (CET) on the day judgment is delivered.

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*Pictures of the delivery of the judgment are available on EbS "Europe by Satellite",
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