Case C-221/20

Request for a preliminary ruling

Date lodged:

28 May 2020

Referring court:

Korkein hallinto-oikeus (Finland)

Date of the decision to refer:

20 May 2020

Appellant:

A Oy

INTERLOCUTORY ORDER OF THE KORKEIN HALLINTO-OIKEUS
Date of order

20 May 2020

[...]

Concerning Request to the Court of Justice of the European Union for a preliminary ruling pursuant to Article 267 of the Treaty on the Functioning of the European Union (TFEU)

Appellant A Oy

Contested decision

No 18/0924/1 of the Helsingin hallinto-oikeus (Helsinki Administrative Court) of 5 November 2018

Context

1. In the case pending before the Korkein hallinto-oikeus (Supreme Administrative Court, Finland) concerning the levying of excise duty on alcoholic beverages, it is necessary to decide whether the Tulli (customs authority) was permitted to levy

tax on alcoholic beverages from A Oy on the ground that that company is not entitled to the reduced rate of duty on alcoholic beverages provided for small breweries because, due to a legal and economic link between it and another small brewery, B Oy, it is not to be regarded as an independent small brewery within the meaning of Paragraph 9(1) of the Finnish Laki alkoholi- ja alkoholijuomaverosta (Law on the taxation of alcohol and alcoholic beverages).

2. However, the question arises as to whether a company is entitled to a reduced rate of excise duty jointly with another small brewery under the second sentence of Article 4(2) of Council Directive 92/83/EEC of 19 October 1992 on the harmonisation of the structures of excise duties on alcohol and alcoholic beverages ('the Structural Directive'), even though the national Law on the taxation of alcohol and alcoholic beverages does not contain any **[Or. 2]** such provision on the joint taxation of small breweries. This request for a preliminary ruling concerns the interpretation of Article 4(2) of the Structural Directive in the context presented above and further elaborated upon below.

3. It is requested that the request for a preliminary ruling be dealt with together with the request for a preliminary ruling concerning B Oy.

Subject matter of the proceedings and relevant facts

4. *A Oy* is a limited liability company established under Finnish law. The object of the company is brewery and catering operations, retail trade in beverages and brewing equipment, and investment activities in the beverage sector. The company has been brewing beers in its brewery in the city of C since April 2013.

5. In 2016, the *customs authority* carried out a business inspection at the premises of A Oy, which related to the company's products subject to excise duty in the period from 1 May 2013 to 31 December 2015. According to the inspection report prepared by the customs authority on 12 October 2016, A Oy's total gross output of beer in the years 2013 to 2014 was 299 937 litres. In its tax return regarding alcoholic beverages, the company had declared a total of 204 679 litres as the taxable quantity of beer for the period in question. The beer was declared in product group 1294, in which the tax on alcoholic beverages is reduced by 50 per cent.

6. In the course of the inspection, the customs authority established A Oy's connections with other breweries. According to the inspection report, B Oy held 11 per cent of the shares in A Oy in 2013 and 2014 and 12 per cent in 2015. D held 37.55 per cent of the shares in B Oy and 6.87 per cent of the shares in A Oy during the period in question and also held managerial positions in both companies. In addition, A Oy and B Oy engaged in production-related and operational cooperation. A Oy brewed B Oy's beer brands. A Oy's beers were also stored in B Oy's tax warehouse.

7. By additional assessments of 9 December 2016, the customs authority ordered A Oy to pay tax on alcohol beverages, a surcharge for late payment and a penalty for the years 2013 to 2015. According to the grounds given in the decisions, the facts revealed by the customs investigation did not allow the company to be regarded as a legally and economically independent brewery within the meaning of Paragraph 9 of the Law on the taxation of alcohol and alcoholic beverages. In assessing the case, special consideration was given to D's status as a shareholder and his managerial position held in both A Oy and B Oy. With regard to the joint taxation of A Oy and B Oy, the assessment stated that the Finnish legislature had deliberately refrained from treating two or more small breweries as a single brewery in Paragraph 9 of the Law on the taxation of alcohol and alcoholic beverages. **[Or. 3]**

8. A Oy objected to the additional assessments issued by the customs authority. The company's objection was processed by the Verohallinto (tax administration), to which the collection of excise duties was transferred with effect from 1 January 2017.

9. The *tax administration* rejected A Oy's objection by decision of 7 June 2017.

10. *A Oy* contested the decision of the tax administration before the Helsinki Administrative Court. In the course of B Oy's action pending before the Helsinki Administrative Court at the same time, the latter asked the Ministry of Finance for an opinion on joint taxation within the meaning of the Structural Directive.

11. According to the opinion issued by the *Ministry of Finance* on 12 June 2016, the provision of the second sentence of Article 4(2) of the Structural Directive was not binding on Member States, but those which provided for a reduction for small breweries could decide whether to incorporate that provision into their national legislation. The provision which, under certain conditions, would allow two or more independent small breweries to be treated as a single brewery for tax purposes, was not originally included in the national Law on the taxation of alcohol and alcoholic beverages in Finland and had not been added to that law since. This was a conscious decision on the part of the legislature, since the reduction was expressly intended for independent small breweries.

12. In its decision of 5 November 2018, the *Helsinki Administrative Court* dismissed A Oy's action on the ground that the company was not entitled to a tax reduction within the meaning of Paragraph 9 of the Law on the taxation of alcohol and alcoholic beverages. With regard to joint taxation, the Administrative Court stated that the Finnish State had not included the second sentence of Article 4(2) of the Structural Directive in the Law on the tax on alcohol and alcoholic beverages and that, moreover, there was no obligation to do so.

13. *A Oy* lodged an appeal against the decision of the Administrative Court before the Supreme Administrative Court and requested, inter alia, that the decision of the Administrative Court be set aside. The company takes the view that it is a legally

and economically independent small brewery within the meaning of Paragraph 9 of the Law on the taxation of alcohol and alcoholic beverages and that two small breweries could be treated as a single small brewery in the manner referred to in the Structural Directive.

Summary of the essential arguments of the parties

14. In its appeal to the Supreme Administrative Court, *A Oy* asserted, in so far as it is the subject of this request for a preliminary ruling, that Article 4(2) of the Structural Directive contained **[Or. 4]** a definition of an independent small brewery. The second sentence of paragraph 2 concerned the definition of a fundamental concept which was inextricably linked to the application of the directive, and part of a fundamental concept could not be excluded from transposition at national level. The purpose of the Structural Directive and the national Law on the taxation of alcohol and alcoholic beverages did not support the view that the legislature deliberately chose not to include in the national legislation the provision on joint taxation contained in the Directive. Nor did the *travaux préparatoires* make any mention of a decision on the part of the legislature in this regard.

15. The purpose of the tax reduction for small breweries is, it submits, to offset the competitive advantage that large breweries derive from their larger production capacities and thus to promote the operating conditions of small breweries. A further purpose is to prevent large breweries from benefiting from the reduction by dividing their activities between small breweries by formal means. This is clear from the judgment of the Court of Justice in Case C-83/08, *Glückauf Brauerei GmbH*.

16. In addition, A Oy asserted that Article 4(3) of the Structural Directive required that the reduced rates of excise duty should apply equally to beer delivered from small breweries situated in other Member States. If the view that the provision on the joint taxation of small breweries contained in the directive had not been included in the national legislation were to be accepted, the Finnish State could be guilty of unequal tax treatment of beer brewed by small breweries in other Member States.

17. Since the total annual production of A Oy and B Oy did not exceed the ceilings permitted by the Law on the taxation of alcohol and alcoholic beverages and since the companies were legally and economically independent of other small breweries, A Oy took the view that the companies were entitled to the tax reduction on the basis of their joint annual production.

18. To the extent relevant to this request for a preliminary ruling, the *Veronsaajien oikeudenvalvontayksikkö* (body responsible for safeguarding the rights of taxpayers) asserted, before the Supreme Administrative Court, that Paragraph 9 of the Law on the taxation of alcohol and alcoholic beverages was consistent with Article 4 of the Structural Directive. The decisive question, however, was whether

the wording ‘those breweries may be treated as a single independent small brewery’ contained in the second sentence of Article 4(2) of the Directive gave a Member State the possibility of regarding as ‘an independent small brewery’ several breweries which cooperated among themselves or whether that wording obliged the Member State to do so. On the basis of its wording, that provision of the Directive was optional, that is to say, discretionary and not mandatory. There was no corresponding provision in the national Law on the taxation of alcohol and alcoholic beverages. It was clear that the provision of the Directive would have to be incorporated into the national law if it had direct effect. **[Or. 5]**

Provisions of national law

19. Pursuant to Paragraph 9 (as last amended by Law 571/1997), subparagraph 1 (as last amended by Laws 1298/2003 and 1128/2010) of the Alkoholi- ja alkoholijuomaverolaki (1471/1994) (Law on the taxation of alcohol and alcoholic beverages 1471/1994), if the taxpayer can reliably demonstrate that the beer was brewed in an undertaking that is legally and economically independent of other undertakings in the same sector and the volume of beer produced by that undertaking in a calendar year does not exceed 10 000 000 litres, the alcoholic beverage tax payable on the beer is to be reduced:

(1) by 50 per cent in so far as the volume of beer produced by the undertaking in a calendar year does not exceed 200 000 litres;

(2) by 30 per cent in so far as the volume of beer produced by the undertaking in a calendar year exceeds 200 000 litres but does not exceed 3 000 000 litres;

(3) by 20 per cent in so far as the volume of beer produced by the undertaking in a calendar year exceeds 3 000 000 litres but does not exceed 5 500 000 litres;

(4) by 10 per cent in so far as the volume of beer produced by the undertaking in a calendar year exceeds 5 500 000 litres but does not exceed 10 000 000 litres.

20. Pursuant to Paragraph 9 (as last amended by Law 571/1997), subparagraph 3 (as last amended by Law 1298/2003) of the Law on the taxation of alcohol and alcoholic beverages (1471/1994), where two or more undertakings within the meaning of subparagraph 1 engage in production-related or operational cooperation, this does not mean that there is legal or economic interdependence between them. The procurement of raw materials and supplies needed to produce the beer, the packaging of the beer and marketing and distribution are regarded as production-related or operational cooperation. However, the application of this subparagraph requires that the combined production of beer of the undertakings in a calendar year should not exceed 10 000 000 litres.

21. Pursuant to Paragraph 9 (in the version as last amended by Law 383/2015, applicable as from 1 January 2015), subparagraph 1 of the Law on the taxation of alcohol and alcoholic beverages (1471/1994), if the taxpayer can reliably

demonstrate that the beer was brewed in an undertaking that is legally and economically independent of other undertakings, is situated physically apart from other breweries and does not carry out production under licence, and the volume of beer produced by that undertaking in a calendar year does not exceed 15 000 000 litres, the alcoholic beverage tax payable on the beer is to be reduced:

(1) by 50 per cent in so far as the volume of beer produced by the brewery in a calendar year does not exceed 500 000 litres;

(2) by 30 per cent in so far as the volume of beer produced by the brewery in a calendar year exceeds 500 000 litres but does not exceed 3 000 000 litres;

(3) by 20 per cent in so far as the volume of beer produced by the brewery in a calendar year exceeds 3 000 000 litres but does not exceed 5 500 000 litres;

(4) by 10 per cent in so far as the volume of beer produced by the brewery in a calendar year exceeds 5 500 000 litres but does not exceed 10 000 000 litres. **[Or. 6]**

22. Pursuant to Paragraph 9 (as last amended by Law 383/2015), subparagraph 3 of the Law on the taxation of alcohol and alcoholic beverages (1471/1994), where two or more breweries within the meaning of subparagraph 1 engage in production-related or operational cooperation, this does not mean that there is legal or economic interdependence between them. The procurement of raw materials and supplies needed to produce the beer, the packaging of the beer and marketing and distribution are regarded as production-related or operational cooperation. However, the application of this subparagraph requires that the combined output of beer of the breweries in a calendar year should not exceed 15 000 000 litres.

Relevant provisions of EU law and case-law

The Structural Directive

23. Council Directive 92/83/EEC of 19 October 1992 on the harmonisation of the structures of excise duties on alcohol and alcoholic beverages lays down common rules on the structures of excise duties on alcohol and alcoholic beverages. The Directive defines and classifies the different types of alcohol and alcoholic beverages according to their characteristics and establishes a legal framework for tax reductions, exemptions and exceptions granted in certain sectors.

24. The third recital of the Directive states that it is important to the proper functioning of the internal market to determine common definitions for all the products concerned.

25. The seventh recital of the Directive states that, in the case of beer produced in small independent breweries and ethyl alcohol produced in small distilleries,

common solutions are required permitting Member States to apply reduced rates of duty to those products.

26. According to the 17th recital of the Directive, in the cases where Member States are permitted to apply reduced rates, such reduced rates should not cause distortion of competition within the internal market.

27. Article 4 of the directive reads:

'(1) Member States may apply reduced rates of duty, which may be differentiated in accordance with the annual production of the breweries concerned, to beer brewed by independent small breweries within the following limits:

– the reduced rates shall not be applied to undertakings producing more than 200 000 hl of beer per year, **[Or. 7]**

– the reduced rates, which may fall below the minimum rate, shall not be set more than 50% below the standard national rate of excise duty.

(2) For the purposes of the reduced rates the term "independent small brewery" shall mean a brewery which is legally and economically independent of any other brewery, which uses premises situated physically apart from those of any other brewery and does not operate under licence. However, where two or more small breweries cooperate, and their combined annual production does not exceed 200 000 hl, those breweries may be treated as a single independent small brewery.

(3) Member States shall ensure that any reduced rates they may introduce apply equally to beer delivered into their territory from independent small breweries situated in other Member States. In particular they shall ensure that no individual delivery from another Member State ever bears more duty than its exact national equivalent.'

Case-law of the Court of Justice

28. The Court of Justice interpreted the definition of 'independent small brewery' contained in Article 4(2) of the Structural Directive in its judgment in Case C-83/08, *Glückauf Brauerei GmbH*. Although that case essentially concerned the interpretation of the requirement of legal and economic independence of the brewery laid down in that provision, the Court of Justice also made more general statements regarding the purpose of the Structural Directive and the interpretation of Article 4(2) thereof.

29. In paragraph 21 of that judgment, the Court of Justice recalled, referring to the third recital of the Structural Directive and to its title, that, in order to ensure the proper functioning of the internal market, the Directive seeks to establish common definitions for all the products concerned, adopted as part of a policy designed to harmonise the structures of excise duty on alcohol and alcoholic beverages.

According to the Court of Justice, in order to ensure that that directive is applied in a uniform fashion, the terms in it must be interpreted independently on the basis of the wording of the provisions in question and the purpose of the Directive.

30. In paragraph 25 of the aforementioned judgment, the Court of Justice stated that, in accordance with the 7th and 17th recitals of the Directive, the latter seeks, in the case of beer produced in small independent breweries, common solutions to permit **[Or. 8]** Member States to apply reduced rates of duty to those products, while not allowing those reduced rates to lead to distortions of competition in the internal market.

31. According to paragraph 26 of the aforementioned judgment, it follows that the Directive seeks to prevent the benefits of such a reduction from being granted to breweries, the size and capacity of which could cause distortions in the internal market.

32. In paragraph 29 of the aforementioned judgment, the Court of Justice states that the purpose of the independence criterion is to ensure that the reduced rate of duty actually benefits those breweries the size of which represents a handicap, and not those which belong to a group.

33. The Court of Justice also expressed its view on the interpretation of Article 4(2) of the Structural Directive in Case C-285/14, *Brasserie Bouquet*. That case concerned the interpretation of the concept of 'production under licence' within the meaning of that provision.

The need for the preliminary ruling

Interpretation of Article 4(2) of the Structural Directive

34. According to the Supreme Administrative Court, the Court of Justice's case-law to date does not provide an unequivocal answer to the question of whether a Member State which applies reduced rates of excise duty to beer brewed by independent small breweries within the meaning of Article 4 of the Structural Directive must also apply the provision on the joint taxation of small breweries contained in the second sentence of Article 4(2) or whether the application of the latter provision is left to the discretion of the Member State concerned.

35. The Supreme Administrative Court takes the view that an unequivocal answer to the above question of interpretation cannot be inferred from the wording of Article 4(2) of the Structural Directive either.

36. On the one hand, it could be argued that the purpose of the expression 'may be treated' used in the second sentence of that provision is to leave the application of joint taxation of small breweries to the discretion of the Member State even if that Member State has decided to apply the reduced rates of excise duty to beer produced by independent small **[Or. 9]** breweries in accordance with Article 4 of

the Structural Directive. It might be assumed that if the EU legislature had intended to oblige a Member State applying the reduced rates to apply the joint taxation of small breweries as well, the provision would have been worded in such a way as to make it clearer that it was binding on Member States which applied reduced rates.

37. On the other hand, it could also be argued that if the EU legislature had intended to leave the application of joint taxation to the discretion of the Member State applying reduced rates, it would probably have used, for example, the expression 'the Member State may' in the second sentence of Article 4(2) of the Directive. The Supreme Administrative Court considers that this is the wording that is customary (and used, for example, in Article 4(1)) for a provision if its application is to be left to the discretion of the Member State.

38. Accordingly, it could also be assumed that the wording 'may be treated' used in the second sentence of Article 4(2) of the Directive does not refer to the Member State's discretion in applying that provision, but to the fact that breweries that do not satisfy the requirements of the first sentence of Article 4(2) in relation to independence but do satisfy those of the second sentence of that provision may be treated for tax purposes as a single independent small brewery, *without prejudice to the first sentence* of that provision.

39. On the basis of that interpretation, it could be considered that the word '[h]owever' used in the second sentence of Article 4(2) links that sentence to the definition of 'independent small brewery' contained in the first sentence of Article 4(2).

40. The Supreme Administrative Court points out that, according to the case-law of the Court of Justice, when interpreting a provision of EU law which makes no express reference to the law of the Member States for the purpose of determining its meaning and scope, and its terms do not allow its meaning and scope to be determined with certainty, it is important to take into account the context and objectives of that provision (for example, judgment of 6 March 2008, C-98/07, *Nordania Finans A/S*, EU:C:2008:144, paragraph 18).

41. In the present context, the Court of Justice confirmed in paragraphs 20 and 21 of its judgment in Case C-83/08, *Glückauf Brauerei GmbH*, cited above, that the concept of 'independent small brewery' in Article 4(2) of the Structural Directive must be interpreted independently on the basis of the wording of the provisions in question **[Or. 10]** and the purpose of the Directive. In the same context, the Court of Justice stated that '… in order to ensure the proper functioning of the internal market, the Directive seeks to establish common definitions for all the products concerned, adopted as part of a policy designed to harmonise the structures of excise duty on alcohol and alcoholic beverages.' The Supreme Administrative Court concludes that, in the light of the aforementioned purpose of the Directive, the concept of 'independent small brewery' must be interpreted in a uniform

fashion, both in terms of its content and meaning, in all Member States applying the reduced rates on the basis of Article 4 of the Directive.

42. The Supreme Administrative Court takes the view that when interpreting Article 4(2) of the Structural Directive in the context of the present question of interpretation, account should be taken, in addition to the aforementioned general objective of the Directive, of the specific objectives pursued by the EU legislature when it authorised Member States to apply reduced rates of excise duty to beer produced by small breweries in accordance with Article 4 of the Directive.

43. In this regard, the Supreme Administrative Court refers in particular to paragraph 25 of the judgment in Case C-83/03, *Glückauf Brauerei GmbH*, cited above, in which the Court of Justice held that the purpose of the Directive was to seek, 'in the case of beer produced in small independent breweries, common solutions to permit Member States to apply reduced rates of duty to those products, while not allowing those reduced rates to lead to distortions of competition in the internal market.'

44. In paragraph 26 of the judgment in Case C-83/08, *Glückauf Brauerei GmbH*, the Court of Justice also stated that it follows that the Structural Directive '… seeks to prevent the benefits of such a reduction [based on Article 4 of the Directive] from being granted to breweries, the size and capacity of which could cause distortions in the internal market.' In paragraph 29 of the judgment, the Court of Justice also held that the purpose of the independence criterion in Article 4(2) of the Directive '… is to ensure that the reduced rate of duty actually benefits those breweries the size of which represents a handicap, and not those which belong to a group.'

45. The Supreme Administrative Court concludes from the above statements of the Court of Justice that, when interpreting Article 4(2) of the Directive, account must be taken, on the one hand, of the desire to harmonise the structures of excise duties on alcohol and alcoholic beverages **[Or. 11]** and, on the other hand, of the objective of promoting, without causing distorting of competition within the internal market, the position on the market of small breweries the size of which represents a handicap.

46. The Supreme Administrative Court takes the view that the decision of a Member State applying reduced rates of excise duty not to treat two or more small breweries which cooperate with each other and the combined annual output of which does not exceed 200 000 hectolitres as a single independent small brewery would not appear to be consistent with the aforementioned general objective of the Directive and the above-described specific objectives of Article 4 of the Directive. Rather, it would appear to lead to unequal treatment of the very smallest breweries within the meaning of the second sentence of Article 4(2) in relation to those which can be regarded as 'independent small breweries' under the first sentence of that provision.

47. However, in view of the fact that the wording of the second sentence of Article 4(2) of the Structural Directive requires interpretation and in view of the lack of any case-law of the Court of Justice in that regard, the first question is referred for a preliminary ruling.

Direct effect of the second sentence of Article 4(2)of the Structural Directive

48. The Supreme Administrative Court states that the second sentence of Article 4(2) of the Structural Directive, which concerns the joint taxation of small breweries, has not been transposed into Finnish national law.

49. The provisions based on Article 4 of the Directive that concern the reduction of the alcoholic beverage tax on beer produced by small breweries are contained in Paragraph 9 (as last amended by Law 383/2015) of the Law on the taxation of alcohol and alcoholic beverages (1471/1994). However, that provision does not contain provisions on the joint taxation of small breweries that correspond to the second sentence of Article 4(2) of the Directive.

50. For the sake of clarity, the Supreme Administrative Court points out that Paragraph 9(3) of the Law on the taxation of alcohol and alcoholic beverages does not correspond to the second sentence of Article 4(2) of the Directive. That provision of the Law on the taxation of alcohol and alcoholic beverages only lays down the conditions under which two or more small breweries that engage in production-related or operational cooperation are to be regarded as legally and economically independent small breweries despite that **[Or. 12]** cooperation. However, the provision does not provide for the possibility of treating two or more small breweries as one single independent small brewery.

51. Consequently, if the Court of Justice's answer to the first question referred is that a Member State which applies reduced rates of excise duty to beer brewed by independent small breweries within the meaning of Article 4 of the Structural Directive must also apply the provision on the joint taxation of small breweries contained in the second sentence of Article 4(2), it is necessary to assess whether individuals can derive rights that they can rely on before the national courts from the latter provision.

52. According to settled case-law of the Court of Justice, whenever the provisions of a directive appear, so far as their subject matter is concerned, to be unconditional and sufficiently precise, they may be relied upon before the national courts by individuals against the State where the State has failed to implement that directive in domestic law within the period prescribed or where it has failed to implement that directive correctly (for example, judgment of 15 February 2017, C-592/15, *Commissioners for Her Majesty's Revenue & Customs*, EU:C:2017:117, paragraph 13).

53. The Supreme Administrative Court considers that the second sentence of Article 4(2) of the Structural Directive could potentially be interpreted as leaving

a margin of discretion to the Member State in so far as the provision lays down a maximum quantity of 200 000 hectolitres for the combined annual production of breweries. That ceiling corresponds to the annual production ceiling for an independent small brewery laid down in the first indent of Article 4(1) of the Directive. However, Article 4(1) of the Directive allows Member States to differentiate the reduced rates of excise duty in accordance with the annual production of the breweries concerned within the limits of that maximum production volume. It is conceivable that this possibility of differentiation could also apply to the joint taxation of breweries under the second sentence of Article 4(2) of the Directive, which could be interpreted as leaving a certain margin of discretion to the Member State.

54. On the other hand, it could be argued that, if a Member State decides to differentiate rates of duty on the basis of Article 4(1) of the Directive, it is necessarily also obliged to apply a corresponding differentiation criterion to joint taxation under the second sentence of Article 4(2) of the Directive. The Supreme Administrative Court takes the view that this would be justified from the point of view of equal treatment of **[Or. 13]** small breweries. In this case, the discretion conferred by Article 4 of the Directive would relate exclusively to Article 4(1) and not to the second sentence of Article 4(2). On the basis of that interpretation, it would have to be assumed that the latter provision provides for the joint taxation of two or more small breweries which cooperate and the combined annual output of which does not exceed 200 000 hectolitres in such a way as to leave no margin of discretion to the Member State when applying that provision.

55. However, in the absence of any case-law of the Court of Justice on that question, the second question is referred.

56. A Oy and the body responsible for safeguarding the rights of taxpayers have been granted a right to be heard with a view to requesting a preliminary ruling from the Court of Justice.

Interlocutory order of the Supreme Administrative Court on requesting a preliminary ruling from the Court of Justice of the European Union

57. The Supreme Administrative Court has decided to stay the proceedings and to request a preliminary ruling from the Court of Justice of the European Union pursuant to Article 267 of the Treaty on the Functioning of the European Union (TFEU) concerning the application of the second sentence of Article 4(2) of the Structural Directive. The request for a preliminary ruling is necessary for the resolution of the dispute before the Supreme Administrative Court.

Questions referred

1. Is Article 4 of Directive 92/83/EEC to be interpreted as meaning that a Member State which applies reduced rates of excise duty to beer brewed by

independent small breweries pursuant to that provision must also apply the provision on the joint taxation of small breweries contained in the second sentence of Article 4(2) of that directive, or is the application of the latter provision left to the discretion of the Member State concerned?

2. Does the second sentence of Article 4(2) of Directive 92/83/EEC have direct effect?

[...] **[Or. 14]** [...]