

Case C-223/20**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:

B Oy

INTERLOCUTORY HALLINTO-OIKEUS COURT, FINLAND)	ORDER OF THE (SUPREME ADMINISTRATIVE	KORKEIN	Date of Issue; 20 May 2020
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Request to the Court of Justice of the European Union for a preliminary ruling under Article 267 of the Treaty on the Functioning of the European Union (TFEU)

Appellant:
B Oy

Decision under appeal

Decision No 18/0921/1 of 5 November 2018 of the Helsingin hallinto-oikeus (Administrative Court, Helsinki)

Context

- 1 In the case pending before the Supreme Administrative Court concerning excise duty on alcoholic beverages, it is necessary to determine whether the Finnish Customs and Excise Administration ('the customs authority') can order B Oy to pay excise duty on alcoholic beverages on the ground that that company is not entitled to the reduction on excise duty on alcoholic beverages for small breweries as it is not considered to be an independent small brewery, within the meaning of Paragraph 9(1) of the Finnish Law on excise duty on alcohol and alcoholic beverages, by reason of the legal and economic connections between it and another small brewery, A Oy.
- 2 However, the question arises as to whether the company is entitled to a reduced rate of excise duty in conjunction 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'), despite the fact that the national law on excise duties on alcohol and alcoholic beverages does not contain [Or. 2] any such provision on the joint taxation of small breweries. The present request for a preliminary ruling concerns the interpretation of the abovementioned Article 4(2) of the Structural Directive in the context set out in more detail below.
- 3 The referring court asks for this request for a preliminary ruling to be dealt with jointly with the request for a preliminary ruling concerning A Oy.

Subject matter of the dispute and the relevant facts

- 4 B Oy is a company incorporated under Finnish law. The company is engaged in the brewing of farmhouse ale (sahti) and beer, operating restaurants and premises licensed to serve alcohol, wholesale and retail trade in foodstuffs, alcoholic beverages and soft drinks. The company was registered in 1985 and produces farmhouse ales, beer, cider and distillates. The company has production facilities in the city of E.
- 5 In 2015 the customs authority carried out an inspection at B Oy's premises, the subject of the inspection being the goods subject to excise duty in the period from 1 January 2013 to 31 December 2014. According to the report prepared by the customs authority on 18 January 2016, B Oy produced approximately 41 247 litres in 2013 and 32 350 in 2014 of farmhouse ales and beer at its own facilities and in facilities rented from other breweries. In its tax declaration in respect of alcoholic beverages the company declared taxable supplies of beer in product category 1294, with respect to which the excise duty on alcoholic beverages is reduced by 50%.
- 6 In the course of the investigation the customs authority investigated B Oy's relationships with other breweries. According to the investigation report, B Oy is a family business in which, by his own account, D owned 40% of the shares in 2013

and 2014. B Oy owned in excess of 10% of the shares in A Oy and D stated that he owned a further 10% of A Oy's shares. In the period to which the inspection relates D also acted as director of the two companies. Furthermore, B Oy and A Oy cooperated on production and operational matters. In 2013 and 2014 B Oy produced approximately 2 700 litres of beer in premises rented from A Oy.

- 7 On 9 November 2016, the customs authority issued a notice of additional assessment ordering B Oy to pay, inter alia, excise duty on alcoholic beverages, tax surcharges and a tax penalty for the years 2013 and 2014. The grounds for that notice state that, on the basis of the information obtained during the customs inspection, the company could not be regarded as being a legally and financially independent brewery within the meaning of Paragraph 9 of the Law on excise duty on alcohol and alcoholic beverages. The assessment took into account, in particular, D's ownership and managerial role [Or. 3] in both B Oy and A Oy. With regard to the joint taxation of B Oy and A Oy, the notice states that the Finnish legislature deliberately excluded the possibility of treating two or more small breweries as one brewery in Paragraph 9 of the Law on excise duty on alcohol and alcoholic beverages.
- 8 B Oy applied for a rectification of the customs authority's additional assessment in relation to excise duty. Its request for rectification was dealt with by the Verohallinto (Tax Administration) after it was referred to it from the customs authority as of 1 January 2017.
- 9 By decision of 7 June 2017, the Tax Administration rejected B Oy's rectification request.
- 10 B Oy lodged a challenge against the decision of the Tax Administration before the Helsingin hallinto-oikeus (Helsinki Administrative Court). In connection with those proceedings, the Helsinki Administrative Court requested an opinion from the Ministry of Finance on joint taxation for the purposes of the Structural Directive.
- 11 According to the statement issued by the Ministry of Finance on 12 June 2016, the provision in the second sentence of Article 4(2) of the Structural Directive is not binding on Member States, but Member States which introduce a reduced rate of duty for small breweries may decide whether to transpose that provision into national law. A provision that, under certain conditions, allows two or more independent small breweries to be treated as one for tax purposes was not originally included in the national law on excise duty on alcohol and alcoholic beverages in Finland and has not been incorporated since. This was a conscious decision on the part of the legislature, because the reduced rate of excise duty is specifically intended to apply to independent small breweries.
- 12 By decision of 5 November 2018, the Helsingin hallinto-oikeus (Helsinki Administrative Court) dismissed B Oy's appeal, holding that the company was not entitled to the reduced rate of excise duty referred to in Paragraph 9 of the Law on

excise duty on alcohol and alcoholic beverages. As regards joint taxation, that court held that the Finnish State has not transposed the second sentence of Article 4(2) of the Structural Directive into the Law on excise duty on alcohol and alcoholic beverages, and that it is not required to do so.

- 13 B Oy appealed against the decision of the Helsingin hallinto-oikeus (Helsinki Administrative Court) to the Korkein hallinto-oikeus (Supreme Administrative Court) seeking, inter alia, to have that decision set aside. The company considers 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 can be treated as one single brewery for tax purposes, within the meaning of the Structural Directive. [Or. 4]

Summary of the essential arguments of the parties

- 14 In its appeal to the Korkein hallinto-oikeus (Supreme Administrative Court), B Oy claims, in so far as the present request for a preliminary ruling is concerned, that Article 4(2) of the Structural Directive contains a definition of an independent small brewery. The second sentence of Article 4(2), it argues, concerns the definition of a basic concept which is closely linked to the application of the directive and must be transposed into national law. The aim of the Structural Directive and the national law on excise duty on alcohol and alcoholic beverages does not support the view that the legislature deliberately omitted to transpose the provision in the directive on joint taxation. There is also no mention in the *travaux préparatoires* of the legislature's choice in that regard.
- 15 The purpose of the reduction in excise duty for small breweries is to counterbalance the competitive advantage that large breweries derive from their greater production capacity and thus to support the operating conditions of small breweries. Furthermore, the aim is to prevent large breweries from benefiting from the reduction by formally dividing their operations into small breweries. This is clear from the judgment of the Court of Justice of 2 April 2009, *Glückauf Brauerei* (C-83/08, EU:C:2009:228).
- 16 In addition, B Oy argued that Article 4(3) of the Structural Directive requires reduced rates of excise duty to be applied uniformly, including to beer produced by small breweries in other Member States. Taking the view that the provision in the directive on the joint taxation of small breweries has not been transposed into national law, the Finnish State could be guilty of unequal tax treatment of beer produced by small breweries in different Member States.
- 17 As the combined annual production of B Oy and A Oy does not exceed the maximum amounts allowed by the Law on excise duty on alcohol and alcoholic beverages, and as they are legally and economically independent of other small breweries, B Oy considers that they are entitled to a reduction in excise duty on the basis of their joint annual production.

18 Before the Korkein hallinto-oikeus (Supreme Administrative Court), the Veronsaajien oikeudenvallvontayksikkö (the body responsible for safeguarding the rights of taxpayers) submitted that, in so far as the present request for a preliminary ruling is concerned, Paragraph 9 of the Law on excise duty on alcohol and alcoholic beverages is compatible with Article 4 of the Structural Directive. However, the main issue is whether the phrase ‘may [nevertheless] be treated for tax purposes as a single independent small brewery’ in the second sentence of Article 4(2) of the Directive allows or requires a Member State to treat more than one cooperating small brewery as an ‘independent [Or. 5] small brewery’. That provision of the Directive is, by its wording, permissive, that is to say, discretionary and not mandatory. There is no corresponding provision in the national law on excise duty on alcohol and alcoholic beverages. It is clear that a provision of a directive must be incorporated into national law if it has direct effect.

Provisions of national law

19 Paragraph 9(1) of the Alkoholi- ja alkoholijuomaverolain (1471/1994) (Law on excise duty on alcohol and alcoholic beverages) (as last amended by Laws 571/1997, 1298/2003 and 1128/2010) provides that, if the taxable person provides reliable evidence that beer has been produced by another company in the same sector which is legally and economically independent and which during the calendar year produces a volume of beer not exceeding 10 000 000 litres the excise duty on the beer shall be reduced:

(1) by 50 per cent if during the calendar year the company produces a volume of beer not exceeding 200 000 litres;

(2) by 30 per cent if during the calendar year the company produces a volume of beer greater than 200 000 but not exceeding 3 000 000 litres;

(3) by 20 percent if during the calendar year the company produces a volume of beer greater than 3 000 000 but not exceeding 5 500 000 litres;

(4) by 10 percent if during the calendar year the company produces between 5 500 000 and 10 000 000 litres.

20 According to subparagraph 3 (1298/2003) of Paragraph 9 (571/1997) of the Law on excise duty on alcohol and alcoholic beverages (1471/1994), if two or more of the companies referred to in subparagraph 1 thereof cooperate with each other on production or operational matters, there is no presumption of a legal or economic relationship between the companies. The acquisition of raw materials and supplies for the brewing of beer, as well as the packaging, marketing and distribution thereof, are considered to amount to production and operational cooperation. However, for the purposes of this paragraph, the total quantity of beer produced by undertakings during a calendar year is not to exceed 10 000 000 litres.

- 21 Pursuant to Paragraph 9(1) (383/2015) of the Law on excise duty on alcohol and alcoholic beverages (1471/1994), applicable with effect from 1 January 2015, if the taxable person submits a credible statement that the beer has been produced in a brewery which is legally and economically independent of other breweries, which is physically apart from other breweries and does not engage in production under license and the quantity of beer produced in one calendar year does not exceed 15 000 000 litres, the excise duty on alcoholic beverages is to be reduced:
- (1) by 50 per cent if the amount of beer produced by the brewery during a calendar year does not exceed 500 000 litres; **[Or. 6]**
 - (2) by 30 per cent if the amount of beer produced by the brewery during the calendar year is greater than 500 000 but does not exceed 3 000 000 litres;
 - (3) by 20 per cent if that the amount of beer produced by the brewery during the calendar year is greater than 3 000 000 but does not exceed 5 500 000 litres;
 - (4) by 10 per cent if the amount of beer produced by the brewery during the calendar year is greater than 5 500 000 but does not exceed 10 000 000 litres.
- 22 Pursuant to subparagraph 3 of Paragraph 9 (as most recently amended by Law 383/2015) of the Law on excise duty on alcohol and alcoholic beverages (1471/1994), if two or more breweries referred to in subparagraph 1 thereof cooperate on production or operational matters, it is not regarded as indicating a relationship of legal or economic dependence. The acquisition of raw materials and supplies for the brewing of beer, as well as the packaging, marketing and distribution thereof, are considered to amount to cooperation on production and operational matters. However, for the purposes of this subparagraph, the total quantity of beer produced by brewers in one calendar year is not to exceed 15 000 000 litres.

Relevant EU legislation 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 structure 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 applicable in certain sectors.
- 24 The 3rd recital of Directive 92/83 states that it is important to the proper functioning of the internal market to determine common definitions for all the products concerned.

- 25 The 7th recital of that 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 that 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. **[Or. 7]**
- 27 Article 4 of the Directive is worded as follows:
- ‘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,
 - 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 States ever bears more duty than its exact national equivalent.’

Case-law of the Court of Justice

- 28 The European Court of Justice has interpreted the definition of ‘independent small brewery’ set out in Article 4(2) of the Structural Directive in the judgment of 2 April 2009, *Glückauf Brauerei* (C-83/08, EU:C:2009:228). Although the issue in that case principally concerned the interpretation of the requirement of legal and economic independence in the abovementioned provision, in its judgment the Court of Justice also ruled more generally on the objective of the Structural Directive and the interpretation of Article 4(2) thereof.
- 29 In paragraph 21 of the abovementioned judgment, the Court of Justice drew attention to the third recital of the Structural Directive and the title of the Directive, observing that the Directive seeks to ensure the proper functioning of

the internal market, to establish common definitions for all the goods concerned, adopted as part of a policy designed to harmonise the structures of excise duty on alcohol and alcoholic beverages. The Court held that, in order to ensure that that directive is applied in a uniform fashion, [Or. 8] its terms must be interpreted independently in the light of the wording of the provisions in question and the purpose of the directive.

- 30 In paragraph 25 of that judgment, the Court held that, in accordance with the 7th and 17th recitals of Directive 92/83, in the case of beer produced in small independent breweries, the Directive seeks common solutions to allow Member States to apply reduced rates of excise duty to those goods, while not allowing those reduced rates to lead to distortions of competition in the internal market.
- 31 According to paragraph 26 of the abovementioned judgment, Directive 92/83 seeks to prevent the benefits of such a reduction being granted to breweries whose size and capacity could cause distortions in the internal market.
- 32 In paragraph 29 of the abovementioned judgment, the Court of Justice held 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 has also ruled on the interpretation of Article 4(2) of the Structural Directive in the judgment of 4 June 2015, *Brasserie Bouquet* (C-285/14, EU:C:2015:353). The issue in that case was the interpretation of the concept of ‘operate under licence’ in the above provision.

Need for the request for a preliminary ruling

The interpretation of Article 4(2) of the Directive

- 34 According to the Korkein hallinto-oikeus (Supreme Administrative Court), there is no unequivocal answer in previous case law of the Court of Justice as to whether a Member State applying reduced rates of excise duty on beer produced by independent small breweries, within the meaning of Article 4 of the Structural Directive, must also apply the provision on joint taxation for small breweries set out in the second sentence of Article 4(2) thereof, or whether the application of the latter provision is left to the discretion of the Member State concerned. [Or. 9]
- 35 The Korkein hallinto-oikeus (Supreme Administrative Court) observes that the wording of Article 4(2) of the Structural Directive also fails to provide a clear answer to the question of interpretation set out above.
- 36 On the one hand, it may be argued that the expression ‘may be treated’ in the second sentence of that provision indicates that the intention was to leave the application of joint taxation of small breweries to the discretion of the Member State, even if the Member State had decided, in accordance with Article 4 of the

Structural Directive, to apply reduced rates of excise duty to beer produced by independent small brewers. It is possible to conclude that, if the European Union legislature had intended to require a Member State applying reduced rates of duty to apply joint taxation to small breweries, that provision would have been worded in such a way as to indicate more clearly that it was binding on Member States applying reduced rates.

- 37 On the other hand, it may be argued that if the European Union 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 the expression ‘the Member State may’ in the second sentence of Article 4(2) of the directive. According to the Korkein hallinto-oikeus (Supreme Administrative Court), this is the usual way of drafting a provision (and used, for example, in Article 4(1) of the Directive) in order to leave the application of the provision to the discretion of the Member State.
- 38 It is therefore also possible to assume that the expression ‘may be treated’ in the second sentence of Article 4(2) of the Directive does not refer to a Member State’s discretion as to whether or not to apply that provision, but to breweries which do not meet the independence requirements in the first sentence of Article 4(2), but which satisfy the conditions of the second sentence of that provision, which may, *notwithstanding the first sentence* of the provision, be treated for tax purposes as one single independent small brewery.
- 39 According to this interpretation, the word ‘however’ in the second sentence of Article 4(2) of the Directive may be regarded as part of the definition of ‘independent small brewery’ in the first sentence of Article 4(2).
- 40 The Korkein hallinto-oikeus (Supreme Administrative Court) notes that, according to the case-law of the Court of Justice, in such a legal provision in which there is no express reference to the right of the Member States to determine its content and scope and in which, on the basis of the wording used, the content and scope cannot be established with certainty, it is important **[Or. 10]** to take into account also the context and objectives of that provision (see, for example, judgment of 6 March 2008, *Nordania Finans and BG Factoring*, C-98/07, EU:C:2008:144, paragraph 18).
- 41 In the present context, the Court of Justice has ruled, in paragraphs 20 and 21 of the judgment in that the concept of ‘independent small brewery’ in Article 4(2) of the Structural Directive must be interpreted independently in the light, not only of the wording of that provision, but also of the objectives pursued by the Directive. In that connection, the Court of Justice held that the objective of the Directive is, ‘in order to ensure the proper functioning of the internal market, [...] 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 Korkein hallinto-oikeus (Supreme Administrative Court) concludes that, in the light of the abovementioned objective of the Directive, the

concept of ‘independent small brewery’ must be interpreted uniformly in terms of both content and scope in all Member States applying reduced rates under Article 4 thereof.

- 42 According to the Korkein hallinto-oikeus (Supreme Administrative Court), the interpretation of Article 4(2) of the Structural Directive, in the context of the present matter of interpretation, should take into account, in addition to the general objective of the Directive, also the specific objectives pursued by the EU legislature to allow a Member State to apply a reduced rate of excise duty to small breweries in accordance with Article 4 thereof.
- 43 In this regard the Korkein hallinto-oikeus (Supreme Administrative Court) refers in particular to paragraph 25 of the abovementioned judgment in Case C-83/08, *Glückauf Brauerei*, in which the Court of Justice held that the Directive seeks, ‘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 C-83/08, *Glückauf Brauerei*, the Court of Justice stated that the Directive ‘seeks to prevent the benefits of [the reduction laid down in Article 4(2)] from being granted to breweries, the size and capacity of which could cause distortions in the internal market.’ In paragraph 29 of that judgment, the Court of Justice also stated that [Or. 11] that the purpose of the criterion of independence 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 Korkein hallinto-oikeus (Supreme Administrative Court) concludes, from the findings of the Court of Justice set out above, that the interpretation of Article 4 of the Directive must take into account the objective of harmonising the structures of excise duties on alcohol and alcoholic beverages and the objective of promoting, without distorting competition in the internal market, the position of small breweries in a market in which their size may place them at a disadvantage.
- 46 According to the Korkein hallinto-oikeus (Supreme Administrative Court), a decision by a Member State, which applies reduced rates of excise duty, not to treat two or more cooperating small breweries with a combined annual production of up to 200 000 hl as one independent small brewery would not appear to be consistent with the general objective of the Directive and with the specific objectives in Article 4 thereof set out above. Rather, it would appear to lead to unequal treatment of the smallest breweries within the meaning of the second sentence of Article 4(2) of the Directive in relation to those which may be regarded as ‘independent small brewers’ in the first sentence of that provision.

- 47 However, in view of the ambiguity of the wording of the second sentence of Article 4(2) of the Structural Directive and the absence of relevant case-law of the Court of Justice, 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 Korkein hallinto-oikeus (Supreme Administrative Court) finds that the second sentence of Article 4(2) of the Structural Directive on the joint taxation of small breweries has not been transposed into Finnish law.
- 49 The provisions based on Article 4 of the Directive on the reduction of excise duty on beer produced by small breweries are contained in Paragraph 9 of the Law on excise duty on alcohol and alcoholic beverages (1471/1994), as last amended by Law 383/2015. However, that provision does not contain any provision on joint taxation of small breweries similar to the second sentence of Article 4(2) of the Directive. **[Or. 12]**
- 50 For the sake of clarity, the Korkein hallinto-oikeus (Supreme Administrative Court) observes that Paragraph 9(3) of the Law on excise duty on alcohol and alcoholic beverages does not correspond to the second sentence of Article 4(2) of the Directive. That provision of the Law on excise duty on alcohol and alcoholic beverages lays down only the conditions under which two or more breweries which cooperate on production or operational matters may, despite that cooperation, be regarded as small breweries which are legally and economically independent. Nor does the provision provide for the possibility of treating two or more small breweries as one independent small brewery.
- 51 Accordingly, if, in answer to the first question, the Court were to hold that a Member State applying reduced rates of excise duty to beer produced by independent small breweries, in accordance with Article 4 of the Structural Directive, must also apply the so-called small brewery joint taxation provision, in the second sentence of Article 4(2), it will also be necessary to determine whether, under the latter provision, individuals have rights which they may invoke before the national courts.
- 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 in Case C-592/15, *Commissioners for Her Majesty's Revenue & Customs*, EU:C:2017:117, paragraph 13).
- 53 The Korkein hallinto-oikeus (Supreme Administrative Court) considers that it is possible to conclude that the second sentence of Article 4(2) of the Structural Directive gives a margin of discretion to Member States in so far as it lays down a

limit of 200 000 hl for the total annual production for breweries. That condition corresponds to the maximum annual production of 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 set different reduced rates of excise duty according to the annual production of the breweries under that maximum production limit. It is conceivable that this possibility of setting different rates also concerns the joint taxation of breweries under the second sentence of Article 4(2) of the Directive, which may give the Member State a certain degree of discretion. **[Or. 13]**

- 54 On the other hand, it may be argued that, in deciding to set different rates of excise duty under Article 4(1) of the Directive, a Member State is required to apply a similar differentiation criterion to joint taxation under the second sentence of Article 4(2) thereof. In the view of the Korkein hallinto-oikeus (Supreme Administrative Court), this would be justified from the point of view of equal treatment of small breweries. In that case, the discretion provided for by Article 4 of the Directive would relate solely to the provision of Article 4(1) - not to the second sentence of Article 4(2). On the basis of that interpretation, the latter provision should be regarded as providing for joint taxation of two or more cooperating small breweries with a combined annual production of not more than 200 000 hl in a way which leaves no discretion to Member States in the application of that provision.
- 55 However, in the absence of any case-law of the Court of Justice on this matter, the second question is referred.
- 56 B Oy and the Veronsaajien oikeudenvallontayksikö (the body responsible for safeguarding the rights of taxpayers) have been authorised to set out their views on the referral of the case to the Court of Justice for a preliminary ruling.

Interlocutory order of the Supreme Administrative Court concerning a referral for a preliminary ruling to the Court of Justice

- 57 The Korkein hallinto-oikeus (Supreme Administrative Court) has decided to stay the proceedings and to refer questions to the Court of Justice for a preliminary ruling under 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. A preliminary ruling is necessary for the resolution of the dispute pending before the Korkein hallinto-oikeus (Supreme Administrative Court).

Questions referred for a preliminary ruling

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 produced 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] ...

WORKING DOCUMENT