

Case C-83/08

Glückauf Brauerei GmbH

v

Hauptzollamt Erfurt

(Reference for a preliminary ruling
from the Thüringer Finanzgericht)

(Harmonisation of the structures of excise duties — Directive 92/83/EEC —
Article 4(2) — Small independent brewery which is legally and economically
independent of any other brewery — Criteria of legal and economic independence —
Possibility of being subject to indirect influence)

Judgment of the Court (Fourth Chamber), 2 April 2009 I - 2860

Summary of the Judgment

*Tax provisions — Harmonisation of laws — Excise duties — Directive 92/83 — Alcohol and
alcoholic beverages — Application of a reduced rate of excise duty for certain goods*

(Council Directive 92/83, Art. 4(2))

I - 2857

Article 4(2) of Council Directive 92/83 on the harmonisation of the structures of excise duties on alcohol and alcoholic beverages must be interpreted as meaning that a situation characterised by the existence of structural links in terms of shareholdings and voting rights, and which results in a situation in which one individual, performing his duties as manager of a number of the breweries concerned, is able, independently of his actual conduct, to exercise influence over the taking of business decisions by those breweries, prevents them from being considered economically independent of each other.

Directive 92/83 seeks to prevent the benefits of a reduction of duty on beer from being granted to breweries, the size and capacity of which could cause distortions in the internal market. In those circumstances, the criteria of legal and economic independence, laid down in Article 4(2) of that directive, seek to ensure that any form of economic or legal dependence between breweries results in exclusion from the tax advantage represented by the reduced rate of duty on beer.

In that context, the concept of a 'brewery which is legally and economically independent of any other brewery', within the meaning of Article 4(2) of Directive 92/83, implies ascertaining whether, as between the brew-

eries concerned, there is a relationship of legal dependency at the level of, in particular, management of the breweries or the holding of share capital or voting rights, or even a relationship of economic dependence, such as to affect the capacity of those breweries to take business decisions independently.

Furthermore, 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. In those circumstances, in order to include, in the application of Article 4(2) of Directive 92/83, only breweries which are genuinely legally and economically independent, it is necessary to ensure that the condition of independence is not circumvented by purely formal means and, in particular, by legal arrangements between allegedly independent breweries which form, in reality, an economic group the production of which exceeds the limits prescribed in Article 4 of Directive 92/83.

As regards the possible effects of the conduct of the breweries concerned in the market for the purposes of determining their economic independence, Article 4(2) of Directive 92/83 concerns the legal and economic structures of breweries without referring expressly to the

conduct of those breweries in the market. In addition, the presence of breweries on distinct markets with separate ranges of products cannot allow for the finding that they are economically independent of one another. Such a circumstance may, on the contrary, result from the existence of a deliberate

strategy decided at the group level, and designed to avoid or reduce internal competition between them.

(see paras 26, 28, 29, 33, 35, 36, operative part)