



## Reports of Cases

### JUDGMENT OF THE COURT (Fifth Chamber)

12 November 2015\*

(Reference for a preliminary ruling — Articles 34 TFEU and 110 TFEU — Directive 94/62/EC — Articles 1(1), 7 and 15 — Distance selling and transport of alcoholic beverages from another Member State — Excise duty on certain beverage packaging — Exemption where packaging is integrated into a deposit and return system — Articles 34 TFEU, 36 TFEU and 37 TFEU — Requirement of a licence for the retail sale of alcoholic beverages — Monopoly on the retail sale of alcoholic beverages — Justification — Protection of health)

In Case C-198/14,

REQUEST for a preliminary ruling under Article 267 TFEU from the Helsingin hovioikeus (Helsinki Court of Appeal, Finland), made by decision of 16 April 2014, received at the Court on 22 April 2014, in the proceedings

**Valev Visnapuu**

v

**Kihlakunnansyyttäjä,**

**Suomen valtio — Tullihallitus,**

THE COURT (Fifth Chamber),

composed of T. von Danwitz, President of the Fourth Chamber, acting as President of the Fifth Chamber, D. Šváby, A. Rosas, E. Juhász and C. Vajda (Rapporteur), Judges,

Advocate General: Y. Bot,

Registrar: I. Illéssy, Administrator,

having regard to the written procedure and further to the hearing on 29 April 2015,

after considering the observations submitted on behalf of:

- Mr Visnapuu, by P. Snell, oikeustieteen kandidaatti,
- the Finnish Government, by S. Hartikainen, acting as Agent,
- the Swedish Government, by A. Falk and U. Persson, acting as Agents,
- the Norwegian Government, by T. Skjeie and K. Nordland Hansen, acting as Agents,

\* Language of the case: Finnish.

— the European Commission, by G. Wilms, E. Sanfrutos Cano and I. Koskinen, acting as Agents,  
after hearing the Opinion of the Advocate General at the sitting on 9 July 2015,  
gives the following

### Judgment

- 1 This request for a preliminary ruling concerns the interpretation of Articles 34 TFEU, 36 TFEU, 37 TFEU and 110 TFEU and Articles 1(1), 7 and 15 of European Parliament and Council Directive 94/62/EC of 20 December 1994 on packaging and packaging waste (OJ 1994 L 365, p. 10).
- 2 The request has been made in proceedings between Mr Visnapuu, acting on behalf of European Investment Group Oü ('EIG'), and the Kihlakunnansyyttäjä (District Public Prosecutor) concerning the distance selling and delivery of alcoholic beverages to Finnish consumers in breach of Finnish legislation relating, inter alia, to the excise duty on certain beverage packaging and the retail sale of alcoholic beverages.

### Legal context

#### *EU law*

- 3 According to Article 1(1) thereof, the aim of Directive 94/62 is to harmonise national measures concerning the management of packaging and packaging waste in order, on the one hand, to prevent any impact thereof on the environment of all Member States as well as of third countries or to reduce such impact, thus providing a high level of environmental protection, and, on the other hand, to ensure the functioning of the internal market and to avoid obstacles to trade and distortion and restriction of competition within the European Union.
- 4 Article 2(1) provides that the directive applies to all packaging placed on the market in the European Union and all packaging waste, whether it is used or released at industrial, commercial, office, shop, service, household or any other level, regardless of the material used.
- 5 Article 3(1) of Directive 94/62 defines the concept of 'packaging'. The first sentence of that provision states, inter alia, that for the purposes of that directive, 'packaging' means all products made of any materials of any nature to be used for the containment, protection, handling, delivery and presentation of goods, from raw materials to processed goods, from the producer to the user or the consumer.
- 6 Article 7 of Directive 94/62, entitled 'Return, collection and recovery systems', provides:
  - '1. Member States shall take the necessary measures to ensure that systems are set up to provide for:
    - (a) the return and/or collection of used packaging and/or packaging waste from the consumer, other final user, or from the waste stream in order to channel it to the most appropriate waste management alternatives;
    - (b) the reuse or recovery including recycling of the packaging and/or packaging waste collected,in order to meet the objectives laid down in this Directive.

These systems shall be open to the participation of the economic operators of the sectors concerned and to the participation of the competent public authorities. They shall also apply to imported products under non-discriminatory conditions, including the detailed arrangements and any tariffs imposed for access to the systems, and shall be designed so as to avoid barriers to trade or distortions of competition in conformity with the [FEU] Treaty.

2. The measures referred to in paragraph 1 shall form part of a policy covering all packaging and packaging waste and shall take into account, in particular, requirements regarding the protection of environmental and consumer health, safety and hygiene; the protection of the quality, the authenticity and the technical characteristics of the packed goods and materials used; and the protection of industrial and commercial property rights.'

7 Article 15 of Directive 94/62, entitled 'Economic instruments', reads as follows:

'Acting on the basis of the relevant provisions of the Treaty, the Council adopts economic instruments to promote the implementation of the objectives set by this Directive. In the absence of such measures, the Member States may, in accordance with the principles governing [European Union] environmental policy, inter alia, the polluter-pays principle, and the obligations arising out of the Treaty, adopt measures to implement those objectives.'

#### *Finnish law*

#### The Law on excise duty on certain beverage packaging

- 8 In accordance with Paragraph 5 of Law No 1037/2004 on excise duty on certain beverage packaging (Laki eräiden juomapakkausten valmisteverosta; 'the Law on excise duty on certain beverage packaging'), excise duty is set at EUR 0.51 per litre of packaged product.
- 9 Under Paragraph 4 of that law, liability to pay excise duty on certain beverage packaging is governed, inter alia, by Law No 1469/1994 on excise duty (valmisteverotuslaki, 'the Law on Excise Duty').
- 10 Paragraph 6 of the Law on excise duty on certain beverage packaging lays down an exemption in respect of, inter alia, beverage packaging integrated into a functioning return system. 'Functioning return system' means a deposit system in which the beverage packager or importer — acting alone or as provided for in Law No 1072/1993 on waste (jätelaki, 'the Law on Waste') or in the corresponding provisions applicable in the Åland Islands (Finland) — ensures the reuse or recycling of beverage packaging so that the packing is refilled or recovered as raw material.

#### The Law on Excise Duty

- 11 According to the first subparagraph of Paragraph 2 of the Law on Excise Duty in force at the material time, that law governs, unless otherwise provided, the levying of excise duty on, inter alia, alcohol and alcoholic beverages.
- 12 Under the first subparagraph of Paragraph 3 of the Law on Excise Duty, excise duty is applicable to the products mentioned in Paragraph 2 of that law which are produced in Finland or imported into Finland from another Member State and goods which are imported from a non-member country.
- 13 The first subparagraph of Paragraph 10 of the Law on Excise Duty provides that, if a tax representative has not been designated in the context of a distance sale, the distance seller is liable to pay the excise duty on the goods received in Finland. Where a private individual purchases goods from another Member State other than by distance sales, and those goods are transported into Finland by another

private individual or a trader, the private individual who purchased the goods, the person involved in the transport of the goods or the person who holds the goods in Finland are liable to pay the excise duty. According to the fifth subparagraph of Paragraph 10, in addition to the circumstances set out in that paragraph, a person is also liable to pay the excise duty if, for commercial or other purposes, he receives or has custody of goods which are subject to excise duty and was aware, or should reasonably have been aware, when he received or obtained them that those goods had not been correctly taxed in Finland.

- 14 Paragraph 7(6) of the Law on Excise Duty defines distance sales as a sale by which a person other than an authorised warehouse keeper or registered or unregistered trader buys goods in another Member State which are subject to excise duty and which the distance seller or someone acting on his behalf sends or transports directly from another Member State. Under point 6(a) of that paragraph, a distance seller is a person who sells goods in Finland in accordance with point 6.
- 15 Paragraph 9 of the Law on Excise Duty provides inter alia that all unregistered traders, all persons liable to pay excise duty for the purposes of the fourth subparagraph of Paragraph 10 of that law and all distance sellers who do not have a tax representative in Finland must, prior to exporting the goods at issue from another Member State to Finland, declare those goods to the customs authorities referred to in Paragraph 25 of that law and lodge a guarantee for the payment of the excise duty on those goods.
- 16 The first subparagraph of Paragraph 18 of the Law on Excise Duty provides that goods subject to excise duty in another Member State which are transported to Finland from another Member State by a private individual are exempt from excise duty, provided that they are for that individual's own consumption.

#### The Law on Waste

- 17 At the material time, the establishment of a functioning return system in relation to beverage packaging and affiliation to that system were governed by the Law on Waste. According to the first subparagraph of Paragraph 18(g) of that law, a producer, for example a packager or an importer, may fulfil its obligations by collaborating with other producers and traders, by setting up an association or a foundation with legal capacity such as a producer group, by joining such an association or by entering into an agreement with it.
- 18 The second subparagraph of Paragraph 18(g) of the Law on Waste provides that the obligations within a producer group are to be fairly distributed between the producers and any other traders, having regard to the nature and scope of activities, and in such a way as to avoid creating obstacles to trade or distortion of competition. The producer group is to accept as a partner, member or contracting party, under the same conditions as the producers which have already joined the group, any new producer for which, as a result of its small production or for any other reason, it would be economically unfeasible to ensure, by itself, reuse, recovery and any other form of waste management.

#### The Law on Alcohol

- 19 Paragraph 1 of Law No 1143/1994 on alcohol (alkoholilaki; 'the Law on Alcohol') states that the aim of that law is to prevent the negative effects of alcohol on society, social life and health by controlling the consumption of alcohol.
- 20 According to Paragraph 8 of the Law on Alcohol, alcoholic beverages may be imported without a special import licence for personal use or for commercial or other business uses, importation for personal consumption being governed more specifically by Paragraph 10 of that law. Paragraph 8 of

that law also provides that any person using alcoholic beverages for commercial or other business purposes requires the special licence provided for by that law in order to import alcoholic beverages for the purposes of the activity in question.

- 21 As regards the importation of alcoholic beverages for personal consumption, which does not require a licence, the referring court notes that the Finnish authorities have stated in various guidelines and circulars that when a private individual orders alcoholic beverages for personal consumption from abroad the right of ownership to those beverages must unequivocally be transferred to the person placing the order before they are imported. In that respect, the person placing the order is required to transport the alcoholic beverages himself or entrust their transport to a third party other than the seller.
- 22 The first subparagraph of Paragraph 13 of the Law on Alcohol provides that, save for the exceptions laid down in Paragraph 14 of that law, the state-owned enterprise for the sale of alcohol, Alko Oy ('Alko'), holds a monopoly on the retail sale of alcoholic beverages.
- 23 According to the second subparagraph of Paragraph 13 of the Law on Alcohol, Alko is entitled to carry out the retail sale of the alcoholic beverages listed in the first subparagraph of that provision solely in an authorised alcoholic beverage outlet which is appropriately located and which may be monitored effectively.
- 24 Under the third paragraph of Paragraph 13 of the Law on Alcohol, notwithstanding the second subparagraph of Paragraph 13, Alko may carry out the retail sale of alcoholic beverages by sending those beverages to the customer or the purchaser in accordance with the provisions laid down by decree.
- 25 However, Paragraph 14 of the Law on Alcohol lays down two derogations from Alko's monopoly on the retail sale of alcoholic beverages.
- 26 The first subparagraph of Paragraph 14 of the Law on Alcohol provides that fermented alcoholic beverages containing a maximum of 4.7% by volume of ethyl alcohol may be sold at retail, not only by Alko, but also by any person who has obtained a retail sale licence from the competent authority.
- 27 According to the second subparagraph of Paragraph 14 of the Law on Alcohol, fermented alcoholic beverages containing a maximum of 13% by volume of ethyl alcohol may be sold at retail, not only by Alko, but also by any person to whom the competent authority has granted permission to produce the product in question, under the conditions laid down by the Ministry of Social Affairs and Health.
- 28 The third subparagraph of Paragraph 14 provides that a licence for the retail sale of alcoholic beverages may be granted to any sufficiently trustworthy person who meets the necessary requirements.
- 29 The fourth subparagraph of Paragraph 14 of the Law on Alcohol provides that the retail sale referred to in the first and second subparagraphs of Paragraph 14 may be carried out only in an authorised outlet which meets the requirements in relation to placement, retail space and operation and where the sale is organised in such a way that it may be monitored effectively.

### **The dispute in the main proceedings and the questions referred for a preliminary ruling**

- 30 EIG, a company established in Estonia and controlled by Mr Visnapuu, maintained a website ('www.alkotaxi.eu') through which Finnish residents could purchase various brands of alcoholic beverages of high or low alcohol strength. After those purchases were paid for, EIG organised home delivery from Estonia to Finland for some of its customers.

- 31 EIG did not declare the importation of alcoholic beverages to the Finnish customs authorities, with the result that no excise duty was imposed. EIG also did not designate a tax representative, within the meaning of the seventh subparagraph of Paragraph 7 of the Law on Excise Duty, who could have paid the excise duty on the goods received in Finland to the Finnish customs authorities. Nor did EIG declare the goods to be dispatched or lodge a guarantee for the payment of the excise duty before the goods were sent to Finland. In addition, EIG also did not pay the excise duty on certain beverage packaging in respect of the packaging of those goods. Lastly, as regards the delivery of the alcoholic beverages to the purchaser after importation, EIG had neither a wholesale licence nor a retail sale licence for the purposes of Paragraph 8 of the Law on Alcohol.
- 32 On the basis of the charges brought by the district prosecutor, the Helsingin käräjäoikeus (Helsinki District Court) found that it was clear that the activities of EIG between 24 June and 18 August 2009 had led to the non-imposition of excise duty on 4507.30 litres of beer, 1499.40 litres of cider, 238.70 litres of wine and 3450.30 litres of spirits imported into Finland. Thus, in total, excise duty on alcoholic beverages amounting to EUR 23144.89 and excise duty on certain beverage packaging amounting to EUR 5233.52 was evaded, for a total amount of EUR 28378.40.
- 33 The Helsingin käräjäoikeus (Helsinki District Court) also found that Mr Visnapuu had transported the abovementioned volumes of alcoholic beverages from Estonia to Finland and sold them in Finland. On that basis, it imposed an eight-month suspended sentence on Mr Visnapuu for aggravated tax fraud and infringement of the Law on Alcohol. Mr Visnapuu was also ordered to pay EUR 28378.40 to the Finnish State for the unpaid taxes, along with interest and costs.
- 34 In the context of his appeal before the referring court, Mr Visnapuu claimed, first, that the charges against him should be dropped and the decision ordering him to pay damages annulled and, secondly, that his costs, plus interest, should be reimbursed. In the alternative, he claimed that the referring court should make a request for a preliminary ruling to the Court of Justice.
- 35 The referring court states that the sequence of events is not in dispute on appeal. Finnish customers ordered alcoholic beverages from EIG via its website and Mr Visnapuu, as EIG's representative, delivered those beverages to some customers by importing the beverages to Finland from Estonia, even though he did not have a licence in accordance with Paragraph 8(1) of the Law on Alcohol. EIG, which had not set up a scheme for the recycling or reuse of packaging or joined such a scheme, did not make a customs declaration to the customs authorities when those alcoholic beverages were imported, with the result that no excise duty was imposed. Nor is it disputed before the referring court that Mr Visnapuu imported the quantities of alcoholic beverages found by the Helsingin käräjäoikeus (Helsinki District Court) and failed to pay the amounts of taxes stated in the judgment delivered by that court.
- 36 The referring court considers that the application of the national legislation in the main proceedings raises several questions of EU law concerning the legislation relating to the excise duty on certain beverage packaging and the requirement to have a retail sale licence in order to import alcoholic beverages with a view to their retail sale in Finland.
- 37 In those circumstances, the Helsingin hovioikeus (Helsinki Court of Appeal), decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:
- ‘(1) Is the permissibility of the Finnish system of beverage packaging duty, under which beverage packaging duty is levied if the packaging is not part of a return system, to be examined in the light of Article 110 TFEU instead of Article 34 TFEU? The return system in question must be a deposit-based system under which the packer of the alcoholic beverages or the importer alone or in accordance with the provisions laid down in the Law on Waste or in the corresponding legislation of the Åland Islands [Finland] takes care of the reuse or recycling of beverage packagings so that the packaging is refilled or recovered as raw material.

- (2) If the answer to Question 1 is affirmative, is that system compatible with Articles 1(1), 7 and 15 of Directive 94/62/EC when examined in combination with Article 110 TFEU?
- (3) If the answer to Question 1 is negative, is that system compatible with Articles 1(1), 7 and 15 of Directive 94/62/EC when examined in combination with Article 34 TFEU?
- (4) If the answer to Question 3 is negative, is the Finnish beverage packaging duty system to be regarded as authorised on the basis of Article 36 TFEU?
- (5) May the requirement that a person using alcoholic beverages for commercial or other business purposes needs a separate retail sale licence for his activity relating to imported alcoholic beverages, in a situation in which a Finnish buyer has purchased via the internet or another method of distance selling from a vendor in another Member State alcoholic beverages which the vendor transports to Finland, be regarded as concerning the existence of a monopoly or as part of the operation of a monopoly, so that the provisions of Article 34 TFEU are not therefore an impediment to it, but it is to be evaluated in the light of Article 37 TFEU?
- (6) If the answer to Question 5 is affirmative, is that licence requirement in such a case compatible with the conditions laid down for State monopolies of a commercial character in Article 37 TFEU?
- (7) If the answer to Question 5 is negative and Article 34 TFEU is applicable to the case, is the Finnish system, under which, where alcoholic beverages are ordered from abroad via the internet or another means of distance selling, their import for personal consumption is permitted only if the person ordering the goods or a person unconnected to the vendor transported the alcoholic beverages into Finland, and under which a licence in accordance with the Law on Alcohol is otherwise required for the import, a quantitative restriction on imports or a measure having equivalent effect contrary to Article 34 TFEU?
- (8) If the answer to the preceding question is affirmative, can the system be considered justified and proportionate in order to protect the health and life of humans?

### **The questions referred for a preliminary ruling**

38 Questions 1 to 4, which concern the legislation relating to the excise duty on certain beverage packaging, and Questions 5 to 8, which concern the requirement to have a retail sale licence in order to import alcoholic beverages with a view to their retail sale in Finland, must be examined separately.

#### *Questions 1 to 4*

39 By Questions 1 to 4, the referring court asks, in essence, whether Articles 34 TFEU and 110 TFEU and Articles 1(1), 7 and 15 of Directive 94/62 must be interpreted as precluding legislation of a Member State, such as that at issue in the main proceedings, which imposes an excise duty on certain beverage packaging, but lays down an exemption for packaging integrated into a functioning return system.

#### The applicability of the Treaty provisions

40 Given that the Questions 1 to 4 concern provisions of Directive 94/62 as well as provisions of the Treaty, it must be noted that, in accordance with settled case-law, any national measure in an area which has been the subject of exhaustive harmonisation at EU level must be assessed in the light of the provisions of that harmonising measure and not those of the Treaty (judgment in *UNIC and Uni.co.pel*, C-95/14, EU:C:2015:492, paragraph 33 and the case-law cited).

- 41 It is therefore appropriate, as a preliminary point, to examine whether the harmonisation brought about by Articles 1(1), 7 and 15 of Directive 94/62 is exhaustive in nature.
- 42 To that end, the Court must interpret those provisions taking into account not only their wording but also the context in which they occur and the objectives of the rules of which they form part (judgment in *UNIC and Uni.co.pel*, C-95/14, EU:C:2015:492, paragraph 35 and the case-law cited).
- 43 According to Article 1(1) thereof, Directive 94/62 aims to harmonize national measures concerning the management of packaging and packaging waste in order, on the one hand, to prevent any impact thereof on the environment of all Member States as well as of third countries or to reduce such impact, thus providing a high level of environmental protection, and, on the other hand, to ensure the functioning of the internal market and to avoid obstacles to trade and distortion and restriction of competition within the European Union.
- 44 The Court has already held that Article 5 of Directive 94/62 does not exhaustively harmonise the organisation of national systems intended to encourage the reuse of packaging (see, to that effect, judgments in *Radlberger Getränkegesellschaft and S. Spitz*, C-309/02, EU:C:2004:799, paragraph 56, and in *Commission v Germany*, C-463/01, EU:C:2004:797, paragraph 44). In that respect, the Court has held, inter alia, that Article 5 of Directive 94/62 allows the Member States to encourage systems for the reuse of packaging only ‘in conformity with the Treaty’ (see judgments in *Radlberger Getränkegesellschaft and S. Spitz*, C-309/02, EU:C:2004:799, paragraph 58, and in *Commission v Germany*, C-463/01, EU:C:2004:797, paragraph 46).
- 45 Similarly, the second subparagraph of Article 7(1) of Directive 94/62 provides that the return and/or collection systems and the reuse or recovery systems must also apply to imported products under non-discriminatory conditions, including the detailed arrangements and any tariffs imposed for access to the systems, and must be designed so as to avoid barriers to trade or distortions of competition ‘in conformity with the Treaty’.
- 46 Accordingly, like Article 5 of Directive 94/62, Article 7 thereof does not bring about an exhaustive harmonisation, but rather refers to the relevant provisions of the Treaty.
- 47 Article 15 of Directive 94/62 does not carry out any harmonisation but rather authorises the Council to adopt economic instruments to promote the implementation of the objectives set by that directive or, in the absence of such measures, authorises the Member State, acting ‘in accordance with ... the obligations arising out of the Treaty’, to adopt measures to implement those objectives. Thus, that provision also requires the application of the relevant provisions of the Treaty.
- 48 It follows from the foregoing that the harmonisation carried out by Articles 1(1), 7 and 15 of Directive 94/62 is not exhaustive in nature, as the Advocate General pointed out in point 75 of his Opinion. Accordingly, the national measures implementing those articles must be assessed not only in the light of the provisions of that directive, but also in the light of the relevant provision of primary law.

#### The applicability of Article 34 TFEU or Article 110 TFEU

- 49 Since the national measures implementing Articles 1(1), 7 and 15 of Directive 94/62 must be assessed in the light of the relevant provisions of primary law, it is necessary to determine whether legislation establishing an excise duty on certain beverage packaging such as that at issue in the main proceedings should be assessed in the light of Article 34 TFEU and/or Article 110 TFEU. Mr Visnapuu, the Finnish Government and the European Commission take the view that the legislation in question must be assessed in the light of Article 110 TFEU.



- 50 The Court has repeatedly held that Articles 34 TFEU and Article 110 TFEU are mutually exclusive in their scope. It is settled case-law that the scope of Article 34 TFEU does not extend to the obstacles to trade covered by other specific provisions and that the obstacles of a fiscal nature referred to in Article 110 TFEU are not covered by the prohibition laid down in Article 34 TFEU (see, *inter alia*, judgment in *Tatu*, C-402/09, EU:C:2011:219, paragraph 33).
- 51 A pecuniary charge constitutes internal taxation within the meaning of Article 110 TFEU if it relates to a general system of internal dues applied systematically to categories of products in accordance with objective criteria applied irrespective of the origin or destination of the products (see, *inter alia*, judgments in *Koornstra*, C-517/04, EU:C:2006:375, paragraph 16, and in *Stadtgemeinde Frohnleiten and Gemeindebetriebe Frohnleiten*, C-221/06, EU:C:2007:657, paragraph 31).
- 52 In the present case, it can be seen from paragraphs 8 to 10 of the present judgment that the legislation at issue in the main proceedings establishes an excise duty on certain beverage packaging amounting to EUR 0.51 per litre of packaged goods, but lays down an exemption from that excise duty for beverage packaging which is integrated into a functioning return system.
- 53 In view of those characteristics, it must be found, first, that the excise duty at issue in the main proceedings is a pecuniary charge relating to a general system of internal dues applied systematically to a category of products, namely beverage packaging. In that regard, the Court has already held that waste for disposal must be regarded as ‘products’ within the meaning of Article 110 TFEU (judgment in *Stadtgemeinde Frohnleiten and Gemeindebetriebe Frohnleiten*, C-221/06, EU:C:2007:657, paragraphs 36 to 38). Accordingly, an excise duty on certain beverage packaging must be regarded as being imposed on products for the purposes of that provision.
- 54 Secondly, it can be seen from the order for reference that the excise duty in question is imposed on beverage packaging in accordance with objective criteria applied irrespective of the origin or destination of the packaging. That excise duty is imposed on both domestic beverage packaging and imported beverage packaging, if that packaging has not been integrated into a functioning return system.
- 55 It follows from the foregoing that an excise duty on certain beverage packaging such as that at issue in the main proceedings constitutes internal taxation within the meaning of Article 110 TFEU. In accordance with the case-law cited in paragraph 50 of the present judgment, such an excise duty must be assessed in the light of Article 110 TFEU, and not in the light of Article 34 TFEU.

#### The interpretation of Article 110 TFEU

- 56 The Finnish Government and the Commission maintain that the legislation establishing an excise duty on certain beverage packing complies with Article 110 TFEU. In contrast, Mr Visnapuu submits that that legislation is discriminatory and contrary to Article 110 TFEU, since a seller operating from another Member State cannot, in practice, join a functioning return system.
- 57 Pursuant to the first paragraph of Article 110 TFEU, no Member State is to impose, directly or indirectly, on the products of other Member States any internal taxation of any kind in excess of that imposed directly or indirectly on similar domestic products. The second paragraph of that provision provides that no Member State is to impose on the products of other Member States any internal taxation of such a nature as to afford indirect protection to other products.
- 58 It does not appear from the file before the Court that the Law on excise duty on certain beverage packaging, at issue in the main proceedings, is of such a nature as to afford indirect protection to domestic products other than beverage packaging, for the purposes of the second paragraph of

Article 110 TFEU. Accordingly, the Court's assessment must be limited to the first paragraph of that article and to examining whether the taxation imposed on imported beverage packaging by virtue of that excise duty is in excess of that imposed on domestic beverage packaging.

- 59 According to settled case-law, an infringement of the first paragraph of Article 110 TFEU occurs when the tax on the imported product and the tax on the similar domestic product are calculated in a different way and under different conditions so that the imported product, even if only in certain cases, is more heavily taxed. Thus, under that provision, an excise duty must not affect products originating from other Member States more onerously than similar domestic products (judgment in *Brzeziński*, C-313/05, EU:C:2007:33, paragraph 29 and the case-law cited).
- 60 In the main proceedings, the Finnish Government and the Commission rightly point out that the conditions under which the excise duty on certain beverage packaging is imposed — that is to say the amount, the base and the exemption conditions — are worded identically for beverage packaging from other Member States and for similar domestic products. Accordingly, and as the Advocate General pointed out in paragraphs 79 and 80 of his Opinion, no direct discrimination in respect of beverage packaging from other Member States, for the purpose of the first paragraph of Article 110 TFEU, can be found in the present case.
- 61 Mr Visnapuu submits, however, that the conditions which must be met in order to benefit from the exemption for beverage packaging integrated in a functioning return system are indirectly discriminatory, since a distance seller engaging in e-commerce from another Member State cannot benefit from that exemption.
- 62 In support of his argument, Mr Visnapuu states that joining a functioning return system is prohibitively expensive for a distance seller engaging in e-commerce from another Member State, as a result, inter alia, of the requirement to ensure that certain particulars appear on the beverage packaging and the requirement to lodge a guarantee and to pay a membership fee. Mr Visnapuu adds that, for a small e-commerce business, setting up its own functioning return system is not an economically viable option, because of the fixed costs of operating such a system.
- 63 In that regard, it must be pointed out that the difficulties asserted by Mr Visnapuu, even if they were proven, do not show a difference in treatment between beverage packaging from other Member States and similar domestic products, within the meaning of the first paragraph of Article 110 TFEU. It cannot be inferred from such difficulties encountered by a small trader engaged in distance sales in joining a functioning return system or setting up such a system that beverage packaging from other Member States is less likely to enjoy the exemption laid down for packaging integrated into a functioning return system and, consequently, is more heavily taxed than similar national products.
- 64 Moreover, as the Finnish Government submitted at the hearing and as the Advocate General pointed out in points 89 to 91 of his Opinion, small traders established in Finland face the same difficulties in that respect as small traders established in another Member State.
- 65 It follows from the foregoing that Article 110 TFEU does not preclude national legislation imposing an excise duty on certain beverage packaging such as that at issue in the main proceedings.

The interpretation of Articles 1(1), 7 and 15 of Directive 94/62

- 66 The referring court also asks the Court whether Articles 1(1), 7 and 15 of Directive 94/62 preclude national legislation, such as that at issue in the main proceedings, establishing an excise duty on certain beverage packaging. The Finnish Government and the Commission submit that the legislation in question complies with Directive 94/62.

- 67 As a preliminary point, it must be noted that the beverage packaging constitutes ‘packaging’, within the meaning of Article 3(1) of Directive 94/62, and therefore falls within the scope of that directive in accordance with Article 2(1) thereof.
- 68 However, none of the provisions of Article 1(1), 7 and 15 of Directive 94/62 preclude legislation, such as that at issue in the main proceedings, which establishes an excise duty on certain beverage packaging.
- 69 As regards, in particular, the second subparagraph of Article 7(1) of Directive 94/62, that provision provides that the systems of return, collection, reuse or recovery of used packaging and/or packaging waste are to apply to imported products under non-discriminatory conditions and are to be designed so as to avoid barriers to trade or distortions of competition in conformity with the Treaty.
- 70 Nevertheless, it must be pointed out that that obligation relates to the operation of such systems and not the operation of a system of excise duty on certain beverage packaging such as that at issue in the main proceedings, which, as was held in paragraph 63 of the present judgment, does not involve any discrimination against beverage packaging from other Member States.
- 71 Furthermore, the Finnish Government submits in this regard that, according to the second subparagraph of Paragraph 18(g) of the Law on Waste, the obligations within a producer group are to be fairly distributed between the producers and any other traders, having regard to the nature and scope of activities, and in such a way as to avoid creating obstacles to trade or distortion of competition. That provision also requires the producer group to accept as a partner, member or contracting party, under the same conditions as the producers which have already joined the group, any new producer for which, as a result of its small production or for any other reason, it would be economically unfeasible to ensure, by itself, reuse, recovery and any other form of waste management.
- 72 Article 15 of Directive 94/62 allows the Council to adopt ‘economic instruments to promote the implementation of the objective set by this Directive’. In the absence of measures adopted by the Council, that provision authorises the Member States to adopt, ‘in accordance with the principles governing [EU] environmental policy, inter alia, the polluter-pays principle, and the obligations arising out of the Treaty, ... measures to implement those objectives’.
- 73 Legislation establishing an excise duty on certain beverage packaging, such as that at issue in the main proceedings, may be regarded as a measure adopted by a Member State and intended to implement the objectives set by Directive 94/62, within the meaning of Article 15 thereof. As the Finnish Government submits, that legislation encourages traders to join a beverage packaging return system or create their own return system, in order to avoid paying that excise duty.
- 74 Under Article 15 of Directive 94/62, such a measure must be adopted in accordance with the principles governing European Union environmental policy, inter alia, the polluter-pays principle, and the obligations arising out of the Treaty. The Finnish Government rightly noted, at the hearing, that the legislation at issue in the main proceedings implements the polluter-pays principle, since the excise duty must be paid by traders which do not join a beverage packaging return system. Moreover, it has already been held that such legislation complies with the obligations arising out of Article 110 TFEU.
- 75 It follows from the foregoing that Articles 1(1), 7 and 15 of Directive 94/62 do not preclude legislation, such as that at issue in the main proceedings, establishing an excise duty on certain beverage packaging.

76 In the light of all the foregoing considerations, the answer to Questions 1 to 4 is that Article 110 TFEU and Articles 1(1), 7 and 15 of Directive 94/62 must be interpreted as not precluding legislation of a Member State, such as that at issue in the main proceedings, which imposes an excise duty on certain beverage packaging, but lays down an exemption for packaging integrated into a functioning return system.

*Questions 5 to 8*

77 By Questions 5 to 8, the referring court asks, in essence, whether, Articles 34 TFEU, 36 TFEU and 37 TFEU must be interpreted as precluding legislation of a Member State, such as that at issue in the main proceedings, under which a seller established in another Member State must hold a retail sale licence in order to import alcoholic beverages with a view to their retail sale to consumers residing in the first Member State, where that seller, or someone acting on his behalf, transports those beverages.

The applicability of Article 34 TFEU or Article 37 TFEU

78 As a preliminary point, it is necessary to determine whether the licence requirement at issue in the main proceedings should be assessed in the light of Article 34 TFEU or of Article 37 TFEU.

79 To that end, the legislative and factual context of the case before the referring court must be summarised.

80 Paragraph 13 of the Law on Alcohol establishes a monopoly of a commercial character which includes the exclusive right of retail sale of alcoholic beverages in Finland. That monopoly was granted to Alko.

81 Paragraph 14 of the Law on Alcohol nevertheless establishes two derogations from the monopoly granted to Alko. According to the first subparagraph of that provision, fermented alcoholic beverages containing a maximum of 4.7% by volume of ethyl alcohol may be sold at retail, not only by Alko, but also by any person who has obtained a retail sale licence from the competent authority. According to the second subparagraph of Paragraph 14, fermented alcoholic beverages containing a maximum of 13% by volume of ethyl alcohol may be sold at retail, not only by Alko, but also by any person to whom the competent authority has granted permission to produce the product in question, under the conditions laid down by the Ministry of Social Affairs and Health.

82 According to Paragraph 8 of the Law on Alcohol, any person using alcoholic beverages for commercial or other business purposes requires the special licence provided for by that law in order to import alcoholic beverages for the purposes of the activity in question. According to the observations of the Finnish Government, the special licence referred to in Paragraph 8 of the Law on Alcohol may consist, inter alia, in the retail sale licence referred to in the first subparagraph of Paragraph 14 of that law.

83 As regards the case before the referring court, it is undisputed that neither EIG nor Mr Visnapuu held the retail sale licence required under Paragraphs 8 and 14 of the Law on Alcohol for the importation of alcoholic beverages with a view to their retail sale to consumers residing in Finland.

84 It is necessary to determine, in light of those circumstances, whether the retail sale licence required for the importation of alcoholic beverages with a view to their retail sale to consumers residing in Finland, at issue in the main proceedings, must be assessed in the light of Article 34 TFEU or of Article 37 TFEU.

85 According to the Finnish and Norwegian Governments, the monopoly system established by Paragraph 13 of the Law on Alcohol must be assessed in the light of Article 37 TFEU, whereas the licencing scheme laid down in Paragraph 14 of that law must be assessed in the light of Article 34

TFEU. The Swedish Government and the Commission take the view that the retail sale licence requirement at issue in the main proceedings must be assessed in the light of Article 37 TFEU, whereas Mr Visnapuu submits that it must be assessed in the light of Article 34 TFEU.

- 86 According to settled case-law, the rules relating to the existence and the operation of a monopoly must be examined in the light of the provisions of Article 37 TFEU, which are specifically applicable to the exercise, by a domestic commercial monopoly, of its exclusive rights (judgments in *Rosengren and Others*, C-170/04, EU:C:2007:313, paragraph 17 and the case-law cited, and in *ANETT*, C-456/10, EU:C:2012:241, paragraph 22 and the case-law cited).
- 87 However, the effect on trade within the Union of the other provisions of the domestic legislation, which are separable from the operation of the monopoly although they have a bearing upon it, must be examined in the light of Article 34 TFEU (judgments in *Rosengren and Others*, C-170/04, EU:C:2007:313, paragraph 18 and the case-law cited, and in *ANETT*, C-456/10, EU:C:2012:241, paragraph 23 and the case-law cited).
- 88 It is necessary, in accordance with that case-law, to examine whether the retail sale licence required for the importation of alcoholic beverages with a view to their retail sale to consumers residing in Finland, which forms the subject-matter of Questions 5 to 8, constitutes a rule relating to the existence and operation of a monopoly or a rule which is separable from the operation of the monopoly.
- 89 The specific function assigned to the monopoly in question by Paragraph 13 of the Law on Alcohol consists in the exclusive right of retail sale of alcoholic beverages in Finland. However the retail sale of two categories of alcoholic beverage referred to in Paragraph 14 of the Law on Alcohol is excluded from the scope of Alko's exclusive rights, and may be carried out by any duly authorised person.
- 90 It follows from the foregoing that the monopoly system established by Paragraph 13 of the Law on Alcohol must be examined in the light of Article 37 TFEU, since it lays down the rules relating to the existence and the operation of a domestic commercial monopoly.
- 91 However, the two licencing schemes laid down in Paragraph 14 of the Law on Alcohol do not govern the operation of the monopoly granted to Alko or the exercise of its exclusive rights within the meaning of the case-law cited above, since they provide that persons other than Alko, who are duly authorised, may engage in the retail sale of certain categories of alcoholic beverages. Accordingly, those two licencing schemes are separable from the operation of the monopoly granted to Alko and must be examined in the light of Article 34 TFEU, as rightly submitted by the Finnish and Norwegian Governments.
- 92 Questions 5 to 8 expressly refer to a retail sale licence requirement imposed, in the case before the referring court, on Mr Visnapuu. Such a licence requirement necessarily falls within the scope of Paragraph 14 of the Law on Alcohol and, accordingly, must be examined in the light of Article 34 TFEU, and not in the light of Article 37 TFEU.
- 93 However, on the basis of the factual findings set out in the order for reference and summarised in paragraph 32 of the present judgment, it appears that some of the alcoholic beverages imported by Mr Visnapuu, in particular spirits, were not covered by the two licencing schemes established in Paragraph 14 of that law and were therefore covered solely by the retail sale monopoly granted to Alko under Paragraph 13 of that law.
- 94 It must be recalled, in that regard, that, although it does not require total abolition of State monopolies of a commercial character, Article 37 TFEU requires them to be adjusted in such a way as to ensure that no discrimination regarding the conditions under which goods are procured and marketed exists

between nationals of Member States (judgments in *Franzén*, C-189/95, EU:C:1997:504, paragraph 38 and the case-law cited, and in *Hanner*, C-438/02, EU:C:2005:332, paragraph 34 and the case-law cited).

- 95 Thus, Article 37 TFEU requires that the organisation and operation of the monopoly be arranged so as to exclude any discrimination between nationals of Member States as regards the conditions under which goods are procured and marketed, so that trade in goods from other Member States is not put at a disadvantage, in law or in fact, in relation to that in domestic goods and that competition between the economies of the Member States is not distorted (judgment in *Franzén*, C-189/95, EU:C:1997:504, paragraph 40).
- 96 The file before the Court does not contain enough information in that respect and it is for the referring court to examine whether the monopoly on the retail sale of alcoholic beverages granted to Alko by Paragraph 13 of the Law on Alcohol satisfies the abovementioned conditions.

Whether there is a measure having equivalent effect to a quantitative restriction on imports within the meaning of Article 34 TFEU

- 97 In the light of the foregoing, it is necessary to examine whether legislation of a Member State, such as that at issue in the main proceedings, under which a seller established in another Member State must hold a retail sale licence in order to import alcoholic beverages with a view to their retail sale to consumers residing in the first Member State, where that seller, or someone acting on his behalf, transports those beverages, constitutes a measure having equivalent effect to a quantitative restriction on imports within the meaning of Article 34 TFEU.
- 98 According to settled case-law, the prohibition of measures having an effect equivalent to a quantitative restriction, laid down in Article 34 TFEU, applies to all legislation of the Member States that is capable of hindering, directly or indirectly, actually or potentially, trade between Member States (see, inter alia, judgments in *Dassonville*, 8/74, EU:C:1974:82, paragraph 5, and in *Rosengren and Others*, C-170/04, EU:C:2007:313, paragraph 32).
- 99 In view of that case-law, it must be found that a requirement to hold a retail sale licence in order to import alcoholic beverages, such as that at issue in the main proceedings, prevents traders established in other Member States from freely importing alcoholic beverages into Finland with a view to their retail sale.
- 100 In particular, the relevant provisions of the national legislation lay down several conditions that must be met in order to obtain the retail sale licence at issue in the main proceedings. First, the third subparagraph of Paragraph 14 of the Law on Alcohol provides that a licence for the retail sale of alcoholic beverages may be granted to any sufficiently trustworthy person who meets the necessary requirements.
- 101 Secondly, the fourth subparagraph of Paragraph 14 of the Law on Alcohol provides that the retail sale referred to in the first and second subparagraphs of Paragraph 14 may be carried out only in an authorised outlet which meets the requirements in relation to placement, retail space and operation and where the sale is organised in such a way that it may be monitored effectively.
- 102 In those circumstances, the requirement to hold a retail sale licence in order to import alcoholic beverages with a view to their retail sale to Finnish consumers, at issue in the main proceedings, is liable to hinder trade between Member States within the meaning of the case-law cited above, since it prevents traders established in other Member States from freely importing alcoholic beverages into Finland with a view to their retail sale.

- 103 The Court of Justice has indeed held that national provisions restricting or prohibiting certain selling arrangements that, first, apply to all relevant traders operating within the national territory, and, secondly, affect in the same manner, in law and in fact, the marketing of domestic products and those from other Member States are not liable to hinder, directly or indirectly, actually or potentially, trade between Member States within the meaning of the case-law initiated by *Dassonville* (8/74, EU:C:1974:82) (see, inter alia, judgments in *Keck and Mithouard*, C-267/91 and C-268/91, EU:C:1993:905, paragraph 16, and in *Ahokainen and Leppik*, C-434/04, EU:C:2006:609, paragraph 19).
- 104 However, the retail sale licence requirement at issue in the main proceedings does not meet the first condition set out by the Court in *Keck and Mithouard* (C-267/91 and C-268/91, EU:C:1993:905, paragraph 16), according to which the national provisions at issue must apply to all relevant traders operating within the national territory.
- 105 First, the retail sale licence requirement referred to in the first subparagraph of Paragraph 14 of the Law on Alcohol does not apply to all relevant traders operating within the national territory. Alko is entitled to engage in the retail sale of all types of alcoholic beverages, including those referred to in Paragraph 14 of the Law on Alcohol, pursuant to a legislative measure, namely Paragraph 13 of the Law on Alcohol. Thus Alko is not required to obtain a retail sale licence from the relevant authorities under conditions similar to those laid down in the third subparagraph of Paragraph 14 of the Law on Alcohol.
- 106 Secondly, the retail sale licence referred to in the second subparagraph of Paragraph 14 of the Law on Alcohol is available only to manufacturers of alcoholic beverages established in Finland, thus excluding manufacturers established in other Member States.
- 107 Consequently, the requirement to hold a retail sale licence in order to import alcoholic beverages with a view to their retail sale to Finnish consumers, at issue in the main proceedings, does not satisfy the first condition laid down in *Keck and Mithouard* (C-267/91 and C-268/91, EU:C:1993:905, paragraph 16), and therefore it is not necessary to examine whether that requirement affects in the same manner, in law and in fact, the marketing of domestic products and of those from other Member States.
- 108 In the light of the foregoing, it must be held that legislation of a Member State, such as that at issue in the main proceedings, under which a seller established in another Member State must hold a retail sale licence in order to import alcoholic beverages with a view to their retail sale to consumers residing in the first Member State, where that seller, or someone acting on his behalf, transports those beverages, constitutes a measure having equivalent effect to a quantitative restriction on imports within the meaning of Article 34 TFEU.

Whether that measure is justified within the meaning of Article 36 TFEU

- 109 Under Article 36 TFEU, the provisions of Articles 34 TFEU and 35 TFEU are not to preclude prohibitions or restrictions on imports, exports or goods in transit justified on grounds of public morality, public policy or public security; the protection of health and life of humans, animals or plants; the protection of national treasures possessing artistic, historic or archaeological value; or the protection of industrial and commercial property. Such prohibitions or restrictions must not, however, constitute a means of arbitrary discrimination or a disguised restriction on trade between Member States.

- 110 According to settled case-law, an obstacle to the free movement of goods may be justified on one of the public interest grounds set out in Article 36 TFEU or in order to meet overriding requirements. In either case, the national provision must be appropriate for securing the attainment of the objective pursued and must not go beyond what is necessary in order to attain it (see, inter alia, judgment in *Ker-Optika*, C-108/09, EU:C:2010:725, paragraph 57 and the case-law cited).
- 111 The Finnish, Swedish and Norwegian Governments, contrary to Mr Visnapuu, take the view that a requirement to hold a retail sale licence imposed on a seller established in another Member State in order to import alcoholic beverages with a view to their retail sale to customers residing on the national territory, where that seller, or someone acting on his behalf, transports those beverages, is justified by the objective of the protection of human health and life listed in Article 36 TFEU. The Finnish Government submits, inter alia, that the purpose of the Law on Alcohol, as indicated in Paragraph 1 thereof, is to control the consumption of alcohol so as to prevent the harmful effects caused to health and society by alcoholic substances, by establishing a monopoly system and a licencing scheme as regards retail sale.
- 112 More specifically, Paragraph 14 of the Law on Alcohol provides that a retail sale licence may only be granted to a sufficiently trustworthy person who meets the necessary requirements, pursuant to the third subparagraph of that provision, and that retail sale may be carried out only in an authorised outlet where the sale is organised in such a way that it may be monitored effectively, pursuant to the fourth subparagraph of that provision.
- 113 In that respect, the Finnish Government submits that the retail sale licencing scheme enables the monitoring of compliance by retail sellers with the provisions governing the sale of alcoholic beverages, in particular the obligation to sell alcoholic beverages only between 7 a.m. and 9 p.m., the prohibition on the sale of alcoholic beverages to persons under 18 years of age and the prohibition on the sale of alcoholic beverages to inebriated persons.
- 114 The Finnish Government submits, moreover, that the level of protection of health and of public order at which the Finnish policy in relation to alcohol is aimed cannot be achieved by less restrictive means than making the retail sale subject to a licencing scheme or to the exclusive rights of the monopoly. To allow sellers established in other Member States to sell and transport alcoholic beverages to Finnish residents freely would create a new distribution channel for those beverages which would not be subject to any oversight by the competent authorities.
- 115 The Court has already held that legislation which has as its objective the control of the consumption of alcohol so as to prevent the harmful effects caused to health of humans and society by alcoholic substances, and which thus seeks to combat alcohol abuse, reflects health and public policy concerns recognised by Article 36 TFEU (judgments in *Ahokainen and Leppik*, C-434/04, EU:C:2006:609, paragraph 28, and in *Rosengren and Others*, C-170/04, EU:C:2007:313, paragraph 40).
- 116 However, in order for health and public policy concerns to justify a restriction such as that resulting from the prior authorisation system at issue in the main proceedings, the measure in question must be proportionate to the objective to be achieved and not constitute a means of arbitrary discrimination or a disguised restriction on trade between Member States (judgment in *Ahokainen and Leppik*, C-434/04, EU:C:2006:609, paragraph 29; see also, to that effect, judgment in *Rosengren and Others*, C-170/04, EU:C:2007:313, paragraphs 41 and 43).
- 117 In the first place, as to whether the measure is proportionate, since it concerns an exception to the principle of the free movement of goods, it is for the national authorities to demonstrate that their rules are necessary in order to achieve the declared objective, and that this objective could not be achieved by less extensive prohibitions or restrictions, or by prohibitions or restrictions having less



effect on intra-Community trade (see, to that effect, judgments in *Ahokainen and Leppik*, C-434/04, EU:C:2006:609, paragraph 31, and in *Rosengren and Others*, C-170/04, EU:C:2007:313, paragraph 50 and the case-law cited).

- 118 However, if that measure is within the field of public health, account must be taken of the fact that the health and life of humans rank foremost among the assets and interests protected by the Treaty and that it is for the Member States to determine the level of protection which they wish to afford to public health and the way in which that level is to be achieved. Since the level may vary from one Member State to another, Member States should be allowed a measure of discretion (judgment in *Ker-Optika*, C-108/09, EU:C:2010:725, paragraph 58 and the case-law cited, and, to that effect, judgment in *Ahokainen and Leppik*, C-434/04, EU:C:2006:609, paragraphs 32 and 33).
- 119 In the present case, the review of the proportionality and necessity of the measures in question calls for an analysis of the circumstances of law and of fact which characterise the situation in Finland, which the national court is in a better position than the Court of Justice to carry out. Accordingly, it is for the national court to verify, on the basis of all the matters of law and fact before it, whether the prior authorisation system at issue in the main proceedings is such as to achieve the objective of the protection of health and public policy, and whether that objective can be achieved with at least an equivalent level of effectiveness by less restrictive methods (see, to that effect, judgments in *Ahokainen and Leppik*, C-434/04, EU:C:2006:609, paragraphs 37 and 38 and the case-law cited, and in *Rosengren and Others*, C-170/04, EU:C:2007:313, paragraph 55).
- 120 In that respect, it must be pointed out in particular that the fourth subparagraph of Paragraph 14 of the Law on Alcohol establishes an obligation to carry out retail sales in an authorised retail outlet. As the Finnish Government confirmed at the hearing, that obligation prohibits persons authorised under the first or second subparagraphs of Paragraph 14 of the Law on Alcohol from engaging in distance selling of alcoholic beverages, where they, or someone acting on their behalf, transports those beverages.
- 121 Although Alko is, in principle, also required to carry out retail sales in an authorised retail outlet, under the second subparagraph of Paragraph 13 of the Law on Alcohol, it nevertheless follows from the third subparagraph of that provision that Alko may carry out the retail sale of alcoholic beverages by sending those beverages to the customer or the purchaser in accordance with the provisions laid down by decree. When questioned on this issue at the hearing, the Finnish Government confirmed that, in some cases, Alko indeed had the right to sell alcoholic beverages by mail order.
- 122 In those circumstances, it is for the referring court to verify, inter alia, whether the objective of allowing the competent authorities to monitor compliance with the provisions governing the sale of alcoholic beverages, in particular the obligation to sell alcoholic beverages only between 7 a.m. and 9 p.m., the prohibition on the sale of alcoholic beverages to persons under 18 years of age and the prohibition on the sale of alcoholic beverages to inebriated persons, may be achieved with at least an equivalent level of effectiveness by a licencing scheme which does not require that the retail sale of alcoholic beverages be carried out only in an authorised retail outlet.
- 123 In the second place, in order for health and public policy concerns to justify a measure having equivalent effect to a quantitative restriction on imports within the meaning of Article 34 TFEU, such as the retail sale licence requirement at issue in the main proceedings, it is also necessary that the measure in question not constitute a means of arbitrary discrimination or a disguised restriction on trade between Member States, as required under Article 36 TFEU (see, to that effect, judgments in *Ahokainen and Leppik*, C-434/04, EU:C:2006:609, paragraph 29, and in *Rosengren and Others*, C-170/04, EU:C:2007:313, paragraph 41).

- 124 In that regard, as regards the retail sale licencing scheme established in the first subparagraph of Paragraph 14 of the Law on Alcohol, which covers fermented alcoholic beverages containing a maximum of 4.7% by volume of ethyl alcohol, there is nothing before the Court to suggest that the health and public policy grounds on which the Finnish authorities rely have been diverted from their purpose and used in such a way as to discriminate against goods originating in other Member States or indirectly to protect certain national products (see, to that effect, judgments in *Ahokainen and Leppik*, C-434/04, EU:C:2006:609, paragraph 30, and in *Rosengren and Others*, C-170/04, EU:C:2007:313, paragraph 42).
- 125 As regards the retail sale licencing scheme established in the second subparagraph of Paragraph 14 of the Law on Alcohol, which allows manufacturers of alcoholic beverages to sell their own production provided that it is obtained by fermentation and contains a maximum of 13% by volume of ethyl alcohol, the Court has already pointed out that that scheme is open only to manufactures established in Finland, thus excluding manufacturers established in other Member States.
- 126 By restricting entitlement to that derogation solely to manufactures established in Finland, that provision could have the effect of protecting the national production of fermented alcoholic beverages containing a maximum of 13% by volume of ethyl alcohol. The existence of such an effect does not however suffice to establish that the health and public policy grounds on which the Finnish authorities rely have been diverted from their purpose and used in such a way as to discriminate against goods originating in other Member States or indirectly to protect certain national products, for the purpose of Article 36 TFEU and the case-law cited above.
- 127 When questioned on this issue at the hearing, the Finnish Government stated that the licencing scheme in question pursued — in addition to the health and public policy grounds mentioned above — the objective of promoting tourism, since the measure is intended to allow a limited number of alcoholic beverage manufacturers established in Finland, using traditional and artisanal methods, to sell their products at the site of production. The Finnish Government cited, by way of example, certain berry wines produced on farms in Finland which consumers may purchase at the site of production. The Finnish Government added that it was not competent to authorise alcoholic beverage manufacturers established in other Member States to sell their products at the site of production, which, by definition, is situated outside Finnish territory.
- 128 It is for the referring court to examine, on the basis of all the relevant legal and factual circumstances, in particular the limited, traditional and artisanal nature of the national production enjoying the benefit of that derogation invoked by the Finnish Government in its observations submitted to the Court, whether the health and public policy grounds relied on by the Finnish authorities have been diverted from their purpose and used in such a way as to discriminate against goods originating in other Member States or indirectly to protect certain national products, for the purpose of Article 36 TFEU.
- 129 In the light of all the foregoing, the answer to Questions 5 to 8 is that Articles 34 TFEU and 36 TFEU must be interpreted as not precluding legislation of a Member State, such as that at issue in the main proceedings, under which a seller established in another Member State must hold a retail sale licence in order to import alcoholic beverages with a view to their retail sale to consumers residing in the first Member State, where that seller, or someone acting on his behalf, transports those beverages, provided that that legislation is appropriate for securing the attainment of the objective pursued, in the present case the protection of health and public policy, that the objective in question could not be achieved with at least an equivalent level of effectiveness by less restrictive methods and that the legislation does not constitute a means of arbitrary discrimination or a disguised restriction on trade between the Member States, which it is for the referring court to verify.

## Costs

<sup>130</sup> Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the national court, the decision on costs is a matter for that court. Costs incurred in submitting observations to the Court, other than the costs of those parties, are not recoverable.

On those grounds, the Court (Fifth Chamber) hereby rules:

1. **Article 110 TFEU and Articles 1(1), 7 and 15 of European Parliament and Council Directive 94/62/EC of 20 December 1994 on packaging and packaging waste must be interpreted as not precluding legislation of a Member State, such as that at issue in the main proceedings, which imposes an excise duty on certain beverage packaging, but lays down an exemption for packaging integrated into a functioning return system.**
2. **Articles 34 TFEU and 36 TFEU must be interpreted as not precluding legislation of a Member State, such as that at issue in the main proceedings, under which a seller established in another Member State must hold a retail sale licence in order to import alcoholic beverages with a view to their retail sale to consumers residing in the first Member State, where that seller, or someone acting on his behalf, transports those beverages, provided that that legislation is appropriate for securing the attainment of the objective pursued, in the present case the protection of health and public policy, that the objective in question could not be achieved with at least an equivalent level of effectiveness by less restrictive methods and that the legislation does not constitute a means of arbitrary discrimination or a disguised restriction on trade between the Member States, which it is for the referring court to verify.**

[Signatures]