

## Press and Information

## Court of Justice of the European Union PRESS RELEASE No 21/13

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Judgment in Case C-1/12 Ordem dos Técnicos Oficiais de Contas

## EU law precludes a professional association from imposing on its members a system of compulsory training which in part eliminates competition and lays down discriminatory conditions to the detriment of its competitors

The fact that a professional association is required by law to put into place a system of compulsory training does not remove the rules adopted by that association from the scope of EU law

The Order of Chartered Accountants (Ordem dos Técnicos Oficiais de Contas; 'the OTOC') is a Portuguese professional association of which chartered accountants must be members. The OTOC represents their professional interests and oversees all aspects of the practice of their profession.

In Portugal, by virtue of a regulation adopted by the OTOC, chartered accountants are required to have obtained, over the course of the previous two years, an annual average of 35 credits for training provided or approved by the OTOC. The Training Credits Regulation, also adopted by the OTOC, provides for two types of training for that purpose: firstly, institutional training (of a maximum duration of 16 hours), which is intended to make the professionals aware of legislative initiatives and amendments and of questions of ethical and professional conduct; this training can be provided only by the OTOC and every chartered accountant must earn 12 institutional training credits per year; secondly, professional training (of a minimum duration of more than 16 hours), consisting of study sessions on topics central to the profession. This training may be provided by the OTOC but also by bodies registered with the OTOC. The decision to accept or reject the registration of training bodies and the decision to approve or reject training sessions proposed by those bodies are taken by the OTOC following payment of a fee.

By a decision of 7 May 2010, the Portuguese Competition Authority held that the Training Credits Regulation had distorted competition on the market in compulsory training for chartered accountants throughout the national territory, in breach of EU law. A fine was for that reason imposed on the OTOC. That market, it was found, had been artificially segmented, a third of it being reserved to the OTOC (12 credits out of a total of 35), and, on the other segment of that market, discriminatory conditions being imposed to the detriment of competitors of that professional association.

The OTOC sought the annulment of that decision before the Portuguese courts. In that connection, the Tribunal de Relação de Lisboa (Lisbon Court of Appeal), before which the dispute was brought on appeal, asks the Court of Justice whether EU competition law applies to professional associations.

In its judgment delivered today, the Court of Justice declares, firstly, that a regulation adopted by a professional association, such as the OTOC, must be regarded as a decision adopted by an association of undertakings within the meaning of EU competition law<sup>1</sup> Furthermore, the fact that a professional association, such as the OTOC, is required by law to put into place a system of compulsory training for its members cannot remove the rules adopted by that

<sup>&</sup>lt;sup>1</sup> Article 101(1) TFEU prohibits all agreements between undertakings, decisions by associations of undertakings and concerted practices which may affect trade between Member States and which have as their object or effect the prevention, restriction or distortion of competition within the internal market.

**association from the scope of EU competition law,** in so far as those rules are attributable to it alone. In addition, the fact that those rules do not have any direct effect on the economic activities of the members of the professional association does not affect the application of EU competition law, since the infringement of which that professional association is accused concerns a market on which it itself carries on an economic activity.

Secondly, the Court states that a **regulation adopted by a professional association putting into place a system of compulsory training** for chartered accountants in order to guarantee the quality of their services **constitutes a restriction on competition which is prohibited by EU law to the extent to which** – this being a matter for the national court to ascertain – **it eliminates competition within a substantial portion of the relevant market, to the benefit of that professional association, and in so far as it imposes, on the remaining portion of that market, discriminatory conditions to the detriment of competitors of the association.** 

Thus, in order to analyse the effects which the regulation has on competition, the Portuguese court will first have to analyse the structure of the market in order to decide whether there is justification for the distinction drawn between the two types of training on the basis of their objectives, duration and the bodies authorised to provide them. As regards their objectives, there are factors which are liable to show that those two types of training could be regarded, at least in part, as being interchangeable (for example, it is possible for legislative developments to be the subject-matter not only of institutional training but also of professional training). With regard to the bodies authorised to provide those two types of training, the Court observes that the regulation in question reserves a significant portion of the market in compulsory training for chartered accountants to the OTOC. As for their duration, the referring court will have to ascertain whether other training bodies wishing to offer short training programmes are being prevented from doing so, something which would affect the normal operation of supply and demand. It will also have to analyse whether the fact that chartered accountants are required compulsorily to earn a minimum of 12 institutional training credits per year – while there is no analogous requirement for professional training – is liable to confer a competitive advantage on the training sessions provided by the OTOC.

Next, the Portuguese court will have to examine the conditions governing access to the market in question for bodies other than the OTOC, in order to establish whether equality of opportunity is guaranteed as between the various economic operators. In that regard, the Court notes that the professional training provided by the OTOC is not subject to an approval procedure, unlike that of training bodies, for which, moreover, the conditions to be met are drafted in vague terms in the regulation. Thus, the OTOC has conferred on itself the power to rule unilaterally on applications for registration or approval without that power being made subject to any limits, obligations or review procedure, a fact which could lead it to distort competition by favouring the training sessions which it itself organises. Likewise, the Court points out that the approval procedure for training sessions, as organised by the OTOC, is liable to restrict the offer of training proposed by other training bodies inasmuch as it requires applications for approval to be submitted at least three months prior to the start of the training, a requirement which de facto deprives such other training bodies of the opportunity to offer, in the immediate future, training on current issues.

Finally, the Court observes, firstly, that such restrictions appear to go beyond what is necessary to guarantee the quality of the services offered by chartered accountants and, secondly, that they are not covered by the exemptions laid down in the Treaty.

**NOTE:** A reference for a preliminary ruling allows the courts and tribunals of the Member States, in disputes which have been brought before them, to refer questions to the Court of Justice about the interpretation of European Union law or the validity of a European Union act. The Court of Justice does not decide the dispute itself. It is for the national court or tribunal to dispose of the case in accordance with the Court's decision, which is similarly binding on other national courts or tribunals before which a similar issue is raised.

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The full text of the judgment is published on the CURIA website on the day of delivery.

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