

## Portugal, Supreme Administrative Court, 02739/17.2BEBRG-A, 26th May 2022

### Member State

 Portugal

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### Topic

Use of the preliminary reference procedure

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### Sector

Interpretative preliminary question; mandatory preliminary reference

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### Deciding Court Original Language

Supremo Tribunal Administrativo

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### Deciding Court English translation

Supreme Administrative Court

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### Registration N

02739/17.2BEBRG-A

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### Date Decision

26/05/2022

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### ECLI (if available)

N/A

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### National Follow Up Of (when relevant)

Case C-413/22 (pending)

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### EU legal sources and CJEU jurisprudence

Articles 34 and 36 TFEU; Directive 2009/28/EC of the European Parliament and of the Council of 23 April 2009 on the promotion of the use of energy from renewable sources; Communication from the Commission on voluntary schemes and default values in the EU biofuels and bioliquids sustainability scheme (2010/C 160/01); Communication from the Commission on the practical implementation of the EU biofuels and bioliquids sustainability scheme and on counting rules for

biofuels (2010/C 160/02); Commission Implementing Decision (EU) 2016/1361 of 9 August 2016 on recognition of the 'International Sustainability and Carbon Certification system' for demonstrating compliance with the sustainability criteria under Directives 98/70/EC and 2009/28/EC of the European Parliament and of the Council

Case C-549/15, E.ON Biofor Sverige, ECLI:EU:C:2017:490; Case C-242/17, L.E.G.O., ECLI:EU:C:2018:804; Case C-204/12, Essent Belgium, EU:C:2014:2192; Case C-573/12, Ålands Vindkraft.

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## ECtHR Jurisprudence

N/A

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## Subject Matter

Use of the preliminary reference procedure; interpretive preliminary question; mandatory preliminary reference

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## Legal issue(s)

The legal issue is whether there can be a preliminary ruling on the compatibility with EU law of certain transpositions of directives or of certain national legislation.

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## Request for expedited/PPU procedures

NO

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## Interim Relief

N/A

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## National Law Sources

Decree-Law n. 117/2010, of 25th October; Decree-Law n. 6/2012, of 17th January; Decree-Law n. 69/2016, of 3rd November; Portaria n. 8/2012, of 4th January

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## Facts of the case

A company has challenged the administrative penalty imposed by the National Entity for the Energy Sector for payment of €5,702,000.00 in compensation for alleged non-compliance with biofuel incorporation obligations for 2016. It won in the Administrative Court of First Instance, which fully quashed the administrative penalty. The National Entity for the Energy Sector appealed to the Administrative Central Court of the North, which revoked the Administrative Court of First Instance's judgment and fully reinstated the penalty; the Administrative Central Court of the North simultaneously rejecting a request for a preliminary ruling from the CJEU.

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## Reasoning (role of the Charter or other EU, ECHR related legal basis)

The Supreme Administrative Court accepted the appeal taking into account that there were several diverging interpretations in different administrative lower and appeal courts. Regarding the norms to be applied to the dispute, the CJEU had given some guidance regarding its interpretation of these norms in Cases C-549/15, E.ON Biofor Sverige, ECLI:EU:C:2017:490, and C-242/17,

L.E.G.O., ECLI:EU:C:2018:804, but doubts subsisted. In a similar case, a Portuguese Administrative Court of First Instance court had already submitted a request for preliminary ruling (the Portuguese Case reference is 860/21.1BEBRG and the CJEU reference is C-604/21, which, after being decided, has the following identifier: Case C-C-604/21, Vapo Atlantic SA ECLI:EU:C:2023:175). It had rejected posing other questions considering that «the CJEU has no jurisdiction to rule on the conformity of Portuguese legislation or administrative practice with the Directives. As is well known, the CJEU only rules on the interpretation of European provisions or on the validity of acts of European Union law». However, the Supreme Administrative Court stated that one such understanding was not correct and that «there is nothing to prevent a preliminary ruling on the compatibility with European Union law of certain transpositions of European directives or of certain national legislation, since it is always a question, after all, of interpreting European Union law and establishing the limits of its compatibility». Taking this into account, the Supreme Administrative Court decided to submit an interpretive preliminary ruling to the CJEU with additional questions regarding the interpretation of articles 3(4) and 18(3) of Directive 2009/28 and of article 34 TFEU, considering, in addition, it was a mandatory preliminary ruling.

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#### Relation of the case to the EU Charter

N/A

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#### Relation between the EU Charter and ECHR

N/A

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#### Use of Judicial Interaction technique(s)

N/A

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#### Horizontal Judicial Interaction patterns (Internal – with other national courts, and external – with foreign courts)

Citation of other cases of national administrative courts.

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#### Vertical Judicial Interaction patterns (Internal – with other superior national courts, and external – with European supranational courts)

Preliminary reference.

Citation of other cases of the CJEU.

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#### Strategic use of judicial interaction technique (purpose aimed by the national court)

N/A

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#### Impact on Legislation / Policy

N/A

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#### Notes on the national implementation of the preliminary ruling by the referring court

N/A

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Did the national court quote case law of the CJEU/ECtHR (in particular cases not already referred

to by the CJEU in its decision) or the Explanations?

N/A

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Did the national court quote soft law instruments, such as GRECO Reports, Venice Commission, CEPEJ Reports, or CCEJ Reports?

N/A

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Did the national court take into account national case law on fundamental rights?

N/A

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If the court that issued the preliminary reference is not a last instance court, and the “follow up” was appealed before a higher court, include the information

N/A

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Was there a consensus among national courts on how to implement the CJEU's preliminary ruling; and were there divergences between the judiciary and other state powers regarding the implementation of the preliminary ruling?

N/A

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Impact on national case law from the same Member State or other Member States

N/A

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Connected national caselaw / templates

N/A

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Other

N/A

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(Link to) full text

<http://www.gde.mj.pt/jsta.nsf/35fbbbf22e1bb1e680256f8e003ea931/3651136960c2f18380258853003c270>

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