



## EU AND COMPETITION LAW

# OTOC RULING

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The questions concerned the compatibility with Article 101 of the Treaty on the Functioning of the European Union of the Credits Formation Regulation, adopted by OTOC in order to ensure the quality of the services provided, in particular in relation to its provisions on mandatory training of its members.

The Court of Justice ruled that such regulation integrates the notion of «decision taken by an association of undertakings» within the meaning of Article 101 of the Treaty, even though OTOC is compelled to enforce such a system. The fact that its legal rules do not affect directly the economic activity of its members is without prejudice to the application of said provision since the alleged infringement relates to a market in which it carries out an economic activity.

Asked whether Community Law allows for a professional association to require, for the

exercise of the profession, specific training exclusively carried out by it, the Court responded negatively, stating that such behavior represents a forbidden restriction, in so far as it eliminates competition in a substantial part of the market in favor of that professional association and establishes, on the other hand, discriminatory conditions regarding its competitors.

In the Court's opinion, the market access conditions for mandatory training of the chartered accountants imposed by the regulation may hold a significant importance in the companies' option to exercise their activities in Portugal, which could affect the equality of opportunities between the different economic operators.

In its decision, the Court took into consideration the case law according to which, to be capable of affecting trade between Member States, the relevant decision, agreement or practice shall allow the prediction of an influence - whether direct or indirect, actual or potential - with a sufficient degree of probability, on trade flows between Member States, creating a concern of creation of the barriers to the achievement of a single market.

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