

# State Aid: Portugal Appeals General Court's Judgement Upholding Commission's Decision Regarding Madeira Free Zone

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On 30 November 2022, the Portuguese Republic brought an appeal before the Court of Justice of the European Union (ECJ), *Portugal v. Commission* ([Case C-736/22 P](#)), against the judgement of the General Court in the case of *Portugal v Commission* ([Case T-95/21](#)) (for prior coverage of the judgement, see [General Court Upholds Commission Finding of State Aid Concerning Madeira Free Trade Zone; Portugal v Commission \(Zone Franche de Madère\) \(Case T-95/21\) \(21 September 2022\)](#)).

Portugal claims that the ECJ should:

- set aside the General Court's judgement dismissing the action brought by the Portuguese Republic seeking annulment of Article 1 and 4 to 5 of the European Commission's [decision of 4 December 2020](#) on the aid scheme [SA.21259](#) (2018/C) (ex2018/NN) implemented by Portugal for the Madeira Free Zone (MFZ) – Regime III (the Decision). For details on the decision, see [European Commission Concludes that the Madeira Free Zone is not Compatible with State aid \(7 December 2020\)](#); and
- order the European Commission to pay the costs in their entirety, including those incurred by the Portuguese Republic and those relating to the application for interim measures.

As grounds of appeal, the Portugal alleged:

- (1) "Error of law in the application of Article 108(1) [Treaty on the Functioning of the European Union (TFEU)] and Article 1(b)(ii), Article 21 and Article 23 of [Regulation \(EU\) 2015/1589](#), in that the aid at issue is existing aid and not new aid";
- (2) "Error of law consisting in the misinterpretation of the requirement relating to the origin of the profits to which corporation tax is applied, since the MFZ Regime has been applied in compliance with the Commission's decisions of 2007 and 2013 and with Articles 107 and 108 [TFEU](#)";
- (3) "Error of law consisting in a failure to state reasons or an insufficient or contradictory statement of reasons – lack of consistency between the OECD's international legal requirements in tax matters and the interpretation given to the concept of 'activities effectively and materially [performed] in the region'";
- (4) "Error of law in the interpretation of the criterion of 'activities effectively and materially [performed] in the region' on account of a failure to take into consideration the case-law of the Court of Justice on the centre of main interests, the spillover effect and fundamental freedoms";
- (5) "Errors of law consisting in the absence or insufficiency of the statement of reasons and/or distortion of evidence and/or substitution of the grounds of the decision – criterion relating to job creation/maintenance";

- (6) "In the alternative, error of law consisting in the misinterpretation of the criterion relating to job creation/maintenance and/or contradictory and/or insufficient statement of reasons";
- (7) "Error of law, in that the national authorities provided the Commission with 'a method allowing the reality and permanence of the jobs declared to be checked' for the purposes of Regime III";
- (8) "Error of law consisting in the reversal of the burden of proof"; and
- (9) "The judgment under appeal infringes the rights of the defence of the general principles of European Union law".

A summary of the main arguments supporting the abovementioned grounds of appeal can be found in the Official Journal of the European Union ([OJ C 94/19](#), of 13 March 2023).

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