

# ECJ Decides That Additional Solidarity Tax With Tax Base Calculation Rules Less Favourable For Domestic Branches of Non-Resident Credit Institutions is Incompatible with Freedom of Establishment: *Cofidis* (Case C-340/22) (Direct)

21 December 2023

Report from IBFD Knowledge Centre

On 21 December 2023, the Court of Justice of the European Union (ECJ) gave its decision in *Cofidis v. Autoridade Tributária e Aduaneira* ([Case C-340/22](#)) based on a number of grounds.

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

1. Directive 2014/59/EU of the European Parliament and of the Council of 15 May 2014 establishing a framework for the recovery and resolution of credit institutions and investment firms and amending Council Directive 82/891/EEC, and Directives 2001/24/EC, 2002/47/EC, 2004/25/EC, 2005/56/EC, 2007/36/EC, 2011/35/EU, 2012/30/EU and 2013/36/EU, and Regulations (EU) No 1093/2010 and (EU) No 648/2012 of the European Parliament and of the Council,

must be interpreted as not precluding a national law introducing a tax on the liabilities of credit institutions where the method of calculating that tax is allegedly similar to the method of calculating the contributions paid by such institutions under that directive but the revenue received from that tax is not allocated to national financing arrangements for resolution measures.

2. The freedom of establishment guaranteed by Articles 49 and 54 TFEU

must be interpreted as precluding legislation of a Member State introducing a tax the basis of assessment for which is the liabilities of credit institutions that have their registered office in the territory of that Member State, and of subsidiaries and branches of credit institutions that have their registered office in the territory of another Member State, in so far as that legislation makes it possible to deduct own funds and debt instruments that are comparable to own funds, which cannot be issued by entities without legal personality, such as branches."

For a previous TNS regarding the case, see [European Union-2, News 28 July 2023](#).

A more substantial report containing details of the ECJ's decision will be published in the ECJ Case Law collection in due course.

---

European Union; Portugal - ECJ Decides That Additional Solidarity Tax With Tax Base Calculation Rules Less Favourable For Domestic Branches of Non-Resident Credit Institutions is Incompatible with Freedom of Establishment: Cofidis (Case C-340/22) (Direct) (21 Dec. 2023), News IBFD.

Exported / Printed on 9 Mar. 2024 by hkermadi@deloitte.lu.