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PORTUGAL

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GROUP I

I.1. The formulation of the principle of conferral, in Portugal, although corresponding to the classic formulation of the principle in Article 5(2)TEU, uses the expression *attribution,* as is typical in Latin language countries.

I.2. The principle of conferral was seen as something that has already resulted from the first paragraph of Article 5 TEC, having only been symbolically taken in the Lisbon Treaty.

I.3. In Portugal there is a similar doctrine of ultra vires acts of the institutions of the European Union. According to the principle of conferral of the European Union, the EU Institutions can only act within the limits of competence that Member States have transferred to them through the Treaties to achieve the objectives set out by the Member States, and when the EU acts outside the scope of its powers the act is called ultra vires (which comes from English law) and should therefore be annulled.
The ultra vires doctrine distinguishes between manifest violations of the principle of conferral and simple violations. The European institution is responsible when it manifestly violates the applicable law and the jurisprudence of the Court of Justice on a certain matter. A reference to preliminary ruling to the Court of Justice is considered as an indispensable prerequisit to the exercise of judicial review of competences of the European Union by national courts. It is considered that such requirement stems also from the precedence principle of European law over national law.

There is no examples of courts in your country having declared that an act of the European Union is contrary to the conferral of competences in the treaties

I.4. Portuguese doctrine and legal literature is predominantly a description or explanation of what the Treaties establish and intend in the matters of the division of competences in the EU and between the EU and member states. There are no criticisms specifically related to a violation of the division of competences.

I.5. Scientific literature concerning Community law and EU law explains the notions of competences of the European Union and scope of application of European law. However, they do so in a non-related manner, not distinguishing or creating any comparison between them.

There was no discussion in Portugal concerning the formulation of the first sentence of Article 51 (1) of the Charter ("and to the Member States only when they are implementing Union law") before and after the judgment of the Court of 26 February 2013 in the *Åkerberg Fransson* case (C-617/10). It is considered that from the case law of the Court results undoubtedly that the obligation to respect fundamental rights defined in a Union context is only binding for Member States when they act within the framework of European law, and this principle, as enshrined in this Charter, applies to the central authorities as to regional or local bodies, and to public organizations, when they are implementing Union law. The Commission, when a Member State does not respect fundamental rights while implementing Union law, as guardian of the Treaties, has powers of its own to try to end the infringement and may, if necessary, submit the case to the Court of Justice through infringement proceedings mechanism. But the Commission can only intervene if the situation in question has a connection with EU law for example, when national legislation transposes a Union Directive in a way contrary to fundamental rights, or when a public authority applies a Union's legislative act contrary to the fundamental rights, or when a final national judicial decision applies or interprets the Union law in a manner contrary to fundamental rights). Otherwise, the member states have their own fundamental rights protection systems, secured by national courts which the Charter does not replace.

I.6. The principle of subsidiarity is explicitly invoked in our country, since the Treaty of Lisbon, as a principle only applicable to the areas of non-exclusive competence (shared, complementary and competing) between the Union and the Member States.

The principle of subsidiarity determines the action of the European Union outside of the powers assigned to it by the Treaties, intervening only when the objectives of a certain

action can not be achieved effectively by Member States or can be better achieved at European level. The action shall not exceed what is necessary to achieve the objectives assigned by the Treaty.

This principle also sets limits to the exercise of EU competences, avoiding the invasion of internal competences of member states in order to always seek a better harmonization between the joint or parallel action between them.

I.7. The division of powers generated reasoned opinions in our country in respect to the principle of subsidiarity and proportionality, as well as the appropriateness of the legal basis in terms of powers conferred to the European Union.
We mention, in particular, the opinion given by the Portuguese Parliament in the MONTI II proposal, in which it expressed its concern about the adequacy of the Commission's arguments to justify the proposal with the principle of subsidiarity. Also, in the proposal of the Directive on the approximation of laws, regulations and administrative provisions of the Member States concerning the manufacture, presentation and sale of tobacco products and related products , in which the Portuguese Parliament alleged infringement of the principle of subsidiarity.

I.8. The principle of preemption is still seen as a competence management principle that aims to avoid positive or negative conflicts, and is therefore connected to a traditional view of the vertical distribution of powers. In a last instance, according to this principle and the dynamic it prints in the relations between the Union and the Member States, there is a possibility of emptying out of state powers which, initially shared, can become exclusive of the Union, depending on the level of clarification of Community rules. It is also considered that this principle does not prevent a "setback" of the space occupied by European law, although this is not a normative dimension of the principle of preemption to be privileged.
The formulation of the areas of exclusive competence in Article 3 paragraph. 1, point B) TFEU is accepted uncritically. It is considered by the doctrine that competition between companies of different Member States is too important to stay available to national law. Ensuring the uniform application of competition law is a fundamental objective of the internal market, despite the internal market falling itself within the scope of shared competence between the Union and the Member States.

Article 3, paragraph 1 point D) TFEU was also accepted without criticism. It is considered that this rule does not operate any change in the current legal situation. It was foreseen in the Treaties since 1972 and it has been included in the Act of Accession of Denmark, Ireland and the United Kingdom. Since then, all the relevant European legislation in this field provides that the conservation and management of fishery resources is of the responsibility of the Union and not the individual Member States. For more than three decades the Court has been accessing this question and always reaches the same conclusion: this matter is within the exclusive competences of the EU. Thus, this provision does no more than codify existing EU competence in the field of the Common Fisheries Policy: jurisdiction shall be exclusive of the Union as the conservation of marine biological resources, and with regards to other aspects, the common fisheries policy is of shared competence.

In regards to shared competences, scholarship explains that the Treaty adopts a more intricate model by having shared competences that do not depend on the principle of preemption. This means that it does not operate any emptying out of Member States' competences for the exercise of those same competences by the Union (research skills, technological development and space and development cooperation and humanitarian aid). These are, in short, legislative embodiments of the principle of subsidiarity in matters where the individual actions of States may not be sufficient to achieve the proposed objectives, but they obviously can not also endanger those objectives if the Union decides to exercise such jurisdiction. The Lisbon Treaty provides preemption of the Union competence (or estoppel of the Member States) even in situations of internal competence, for preemption due to the Union's external competence is also stated expressly, in Article 3, paragraph 2 TFEU.

The doctrine does not distinguish between the effects of preemption by a regulation, a directive or a decision under Article 288 TFEU.

I.9. There were no cases to date in which our state has been allowed to legislate with an exclusive competence of the European Union.

About the standards or most frequent practice in terms of implementation or transposition:

Directives - The Portuguese Constitution provides in Article 112 /8, that the transposition of directives obeys the form of law, decree-law and regional legislative

decree, as appropriate. The transposition measure has to be a formal and material law. Transposition by administrative regulation or any non-legislative act is prohibited.

Regulations - A direct enforcement of regulations in our legal regulations in our legal and constitutional order results, first of all, and directly, of Articles 8, paragraph 3 and 4, of the Constitution.

Benefiting from an express clause in the Constitution which allows its automatic consecration in the Portuguese legal system (Article 8, paragraph 3, of the Constitution), its applicability depends only on the degree of determination of their prescriptions and whether the need or not to adopt (at European and national level) additional provisions, as established in EU law. In principle, therefore, the rules contained therein are capable of producing direct effects in the domestic legal system, generating rights and impose obligations in the legal sphere of their recipients.

Decisions - The recipients of decisions can be member states or individuals.

When it comes to decisions addressed to the Member States, its direct applicability depends on the adoption by the state of internal implementing acts. On the contrary, decisions aimed at individuals will produce their effectiveness, as long as the conditions required to that effectiveness are verified.

I.10. Regarding the exclusive competences of the European Union in the field of monetary policy for Member States whose currency is the euro, it is considered essential to promote the replacement of national monetary policies geared exclusively to national needs for a single monetary policy, drawn up at European level for the sake of exchange rate stability and reducing the costs of conversion of currencies, all in view of the Union's common needs. The economic union is something more than the emerging common market in Community Treaties. It requires the harmonization of national legislation with direct or indirect impact on the economic system, such as, for example, the customs legislation, labor law, taxation and company law and competition law. In addition, it is necessary that the economic, financial and monetary policies of the member states are coordinated under the aegis of the Community authority. Moreover, an economic union assumes that certain common rules and policies developed within the European framework replace certain national policies on economic and political domination, like the agricultural, industrial and energy, transport policy , regional policy , social politics, environmental policy, etc. Among all the criteria for receipt of public international law standards by constitutional systems, the guidance of the primacy of the

principle of Community law has special emphasis on the level of development of case law and is understood as an absolute and unconditional feature in the European Community system.

I.11. According to the theory of implicit competences in Portugal, the EU can derive, from the tasks and objectives of the Union expressly provided for in the founding treaties, other powers or competences that, although not expressly given, are needed to achieve certain EU goals. In this context, such derived rights can be designated as unwritten (implicit) competences of the Union. This theory has an important application through the exercise of external competence in the areas where the EU has an explicit internal competence. The Lisbon Treaty has contributed to the codification of ECJ case law developments concerning the EU's external powers, by establishing a proper and specific basis to international treaties, namely the Title V of Part V of the TFEU, which provides for the Union´s external action. Article 216 TFEU expressly provides for the competence of the Union to celebrate and conclude international treaties, while the European Community Treaty contained no general jurisdiction of the European Union for the conclusion of treaties, making it difficult to determine the extent of their external expertise. With the abolition of the pillar structure, came into effect a unified procedure for the negotiation and conclusion of international treaties of the Union. This procedure is provided in art. 218 TFEU, which features - more systematically compared to the old art. 300 TEC - the complete process of conclusion of international treaties by the EU. However, despite the introduction of a unified procedure for the negotiation and conclusion of international treaties of the EU, it continues to apply a special scheme for the agreements concluded under the CFSP. In this context, some authors claim that the maintenance of CFSP separate from the other Union's policies in the EU Treaties - provided for in the TFEU - lost the opportunity to bring more coherence to the Union's external activities. In fact, because of this separation, there are differences between the conclusion of treaties based on the CFSP and the conclusion of other treaties concluded by the Union. Nevertheless, the doctrine in Portugal considers that the impact of the Lisbon Treaty on the treaty-making power and the process of completing the EU's international treaties is positive. Their innovations provide that the EU's external actions are endowed with greater legitimacy and implemented more consistently and independently, which contributes to the exercise of a more coherent and prominent role in international relations.

I.12. It has been previously answered.

I.13. Article 352 TFEU allows EU institutions to derive subsidiary competences from their own objectives, laid down in the Treaty, constituting a true standard of conferral of jurisdiction.

Some see in this mechanism an express application of the principle of implicit powers, reading this in a broader perspective, and others understand it as a residual clause, only mobilized when the principle of implicit powers fails.

Scholarship considers that since the 50s to the present day, the evolution of the European integration process has been marked by the phenomenon of continuous expansion of the material scope of competences of the Community's decision-making.

Initially, until the the Single European Act (1986), the extension of powers resulted, on one hand, in the successful alliance between the Commission and the ECJ, and on the other hand, activating the currently planned by clause Article 352.º.

In a second phase, the Lisbon Treaty was a link of continuity by introducing provisions that substantially expanded various fields of action of the Union, either by increasing powers on matters already included within the scope of the Treaties, or by establishing *ex novo* powers on matters redeemed to governmental or intergovernmental level.

Although a standard similar to that in Article I-18, with the designation of flexibility clause, is already inserted in the project of Constitutional Treaty, its inclusion in the Treaty of Lisbon in a displaced part of the Treaties and not under the principles which govern the division of powers aims to strengthen the residual nature of this clause, in addition to the specific meaning of Declaration No 42 attached to the Treaty of Lisbon.

GROUP II

II.1. Scholarship refers to the legal basis of EU acts , for example, when they comment on the Court's case law, in particular when talking about the obligation to state reasons for legal acts of the EU institutions (Article 296 TFEU), on the principle of conferred powers and legal certainty and the validity of the acts in the sense that if the Union can only act in areas of conferred powers, then all the legal acts must have an appropriate legal basis in the Treaty. Even when the institution is not acting under a power

conferred by the Treaties, if an institution delegates one of its acts, the delegatee shall be subjected to the same requirement to state reasons.

II.2. There is no record of actions for annulment by our government based upon the absence of legal basis of an EU act. On another hand, the parliamentary assembly examines the legal basis of acts of the EU in the context of the subsidiarity control procedure, as it did under the Proposal for a Regulation on the exercise of the right of collective action in the context of freedom of establishment and freedom to provide services (Monti II).

II.3. There are no requests for changes in the balance of competences on the current period.

II.4. No.

II.5. Not applicable.

GROUP III

III.1. At the beginning of the European integration process it was understood that the responsibility for administrative implementation should be entrusted to the public authorities of Member States: it was the indirect enforcement system. However, thereafter, it should be noted that there has been a change in certain areas of the EU intervention from the indirect delivery system for State for implementing centralized system, which unfolds in: i) Direct centralized execution, with intervention of the European Commission; ii) indirect centralized execution with the intervention of EU agencies and organisms established within the EU. The Public Administration of the European Union (composed of the European Commission and "other institutions, bodies and agencies") exercises exclusive administrative functions of the Union, through designated "non-legislative acts" which may have a general scope or target certain recipients, as well as "implementing acts". It is very significant that the doctrine today understands that when the execution appears entrusted to the Member States, the phenomenon no longer translates into an indirect implementation but rather in the implementation of a common administrative role. In this context, it is understood now

that European law is implemented in a coordinated and shared manner between the European public administration and national administrations; it is mentioned, sometimes, in this regard, as a co-administration, to represent the joint in a systemic, horizontal or vertical model, among institutions, bodies and agencies of the Union and national administrative structures.

III.2. The principle of procedural autonomy of the member states is presented and interpreted in Portugal as determining that the Member States' Courts are governed by their national procedural law even when they implement EU law.
The principle of autonomy is intended, therefore, to safeguard the Member States in the implementation of European law, taking into account its national public law, including constitutional rules, the bodies and procedures characteristic of the identity of public administration nationals. There are authors who derive an institutional and procedural nature of this principle. The institutional aspect of the principle of autonomy refers to the degree of freedom available to the Member States for the internal distribution of competences and for determining the entities responsible for these competences. The procedural aspect of the principle of autonomy refers to the use of state rules guiding their own administrative procedures for the implementation of Community law by Member States. The principle of full effectiveness of EU law inevitably imposes limits on the principle of procedural autonomy of Member States, established by the ECJ always in response to questions referred by national courts by preliminary ruling. These limits are fundamentally two: i) national procedural law may not make distinctions between claims of individuals based on EU law and claims based on domestic law (principle of equivalence); ii) even not making such distinctions, national procedural law may not make the exercise of a right under EU legal order virtually impossible or excessively difficult (principle of effectiveness).

III.3. The official website of the Directorate General of European Affairs contains a "Good practices manual for negotiation, transposition and enforcement of the law of the European Union", approved in July 2014. It is nof intented directly to focus on or aid with the execution of EU policies. It aims, however, to guarantee the correct enforcement of the EU laws, by aiding in the transposition process.
The mentioned document can be downloaded at this link:

http://www.portugal.gov.pt/media/1538024/Manual%20DGAE%20Transposi%C3%A7%C3%A3o%20de%20diretivas.pdf

III.4. The principle of primacy of EU law, as proclaimed by the ECJ, was accepted almost without hesitation by scholarship and national courts all over.

Since the Courts only have the specific competences assigned to them by Member States in the Treaties, national courts are considered as ordinary courts of EU law in the effective implementation of EU law.

It is understood that the conferral of powers system of the Union to achieve the common objectives would be, in the end, ineffective and that the uniform application of the provisions issued by the EU would be perfectly illusory if each Member State was allowed to establish their own means to enforce EU law and the absolute primacy of those provisions was not generally recognized.

National jurisdictions, despite some hesitations or occasional resistances that best highlight the general consensus, accepted the superiority of European standard over the common internal rules.

Some reservations are expressed, however, on certain fundamental principles discussed in national constitutions and in particular on the principle of respect for fundamental rights.

Article 8, paragraph 4 of the Constitution of the Portuguese Republic does not contain the absolute primacy of Union law as defined by the ECJ, in that it aims to safeguard the " respect for the fundamental principles of democratic rule of law", allowing scholarship to conclude that the Constitution expressly establishes a reservation to the primacy of EU law.

The question is if the Constitutional Court, when faced with such situation, will choose the disapplication of the constitutional rule or resort to the reference for a preliminary ruling for the clarification of that question.

III.5. We found no indicators of public entities or doctrine/scholarship focused on evaluating or criticizing the establishment of said principles and rules at Union level.

III.6. In Portugal there is a specific organizational structure for the management of structural funds or other funds of the European Union called the Agency for development and cohesion, IP.

The Agency for Development and Cohesion I.P. It is invested with a set of tasks to three domains: Regional Development Policy, European Structural Funds and Investment and the Cohesion Policy Funds. With administrative and financial autonomy and its own assets, the Agency is a public institute with a special regime, with legal capacity to intervene on the entire national territory. Standing in the sphere of indirect State administration, part of the Presidency of the Council of Ministers, it operates under supervision and guardianship of the Minister and Regional Development. In addition to the management and control of European Structural Funds, it was assigned to the Agency the responsibility to monitor the application of the same structural policies that are not co-financed, the overall coordination of the European structural funds, direct support to the Interministerial Commission for Coordination of the Partnership Agreement, further adding to the need for greater attention in the context of State aid. The Agency assumes significant financial responsibilities, accounting for the regularity of the implementation of the cohesion policy funds, the fulfillment of the whole programming goals of the European structural funds and investment but also on the effective achievement of the strategic objectives associated with the Partnership Agreement (in 2015).

III.7. There is case law in our country on the management of EU funds by the Administrative and Fiscal Courts, mainly under the European Agricultural Guidance and Guarantee Fund (EAGGF), European Regional Development Fund (ERDF), European Social Fund (ESF) and Financial Institute for Fisheries Guidance (ISOP). Some of the preliminary rulings reveal problems regarding the division of powers between the European Union (especially the Commission) and national authorities, for example, regarding the question of whether the exclusive Commission's power to suspend, reduce or discontinue aid from the Fund is extended to the suspension, reduction or withdrawal of the “national contribution” by the national body managing the State aid.

III.8. The Portuguese Court of Auditors is a founding member of INTOSAI.

Within the INTOSAI, the Portuguese Court of Auditors (TCP) and other Supreme Audit Institutions (SAIs) cooperate with the European Court of Auditors (ECA), without prejudice to their independence, developing joint actions as may be necessary. This cooperation is closely related to the Court for the audit of EU funds, many of which are

managed by national Member State authorities. The ISC and TCP provide valuable practical support to the TEC to ensure the achievement of its audits on site, helping to ensure the effective and efficient implementation of their activities. Sometimes these institutions participate in joint or coordinated audits. International cooperation allows valuable opportunities to exchange views and experiences on conducting public audits.