

**Order of the Court (Fifth Chamber) of 18 June 2012
(reference for a preliminary ruling from the Supremo
Tribunal Administrativo — Portugal) — Amorim Energia
BV v Ministério das Finanças e da Administração Pública**

(Case C-38/11) ⁽¹⁾

*(The first subparagraph of Article 104(3) of the Rules of
Procedure — Articles 49 TFEU and 54 TFEU — Articles
63 TFEU and 65 TFEU — Directive 90/435/EEC — Article
3(2) — Tax legislation — Corporation tax — Taxation of
dividends — Withholding tax — Exemption — Minimum
holding in the company distributing dividends — Conditions
— Minimum period of uninterrupted share ownership —
Conditions — Resident and non-resident recipient companies
— Different treatment)*

(2012/C 366/29)

Language of the case: Portuguese

Referring court

Supremo Tribunal Administrativo

Parties to the main proceedings

Applicant: Amorim Energia BV

Defendant: Ministério das Finanças e da Administração Pública

Intervener: Ministério Público

Re:

Reference for a preliminary ruling — Supremo Tribunal Administrativo — Interpretation of Articles 63 TFEU and 65 TFEU — National legislation subjecting dividends distributed to non-resident companies to tax rules less favourable than those applied to dividends distributed to resident companies — Non-resident companies required to have held shares for a longer minimum period of share holding and to possess a larger minimum holding

Operative part of the order

1. Articles 63 TFEU and 65 TFEU preclude the legislation of a Member State, such as that at issue in the main proceedings, which does not permit a company resident in another Member State with a holding of more than 10 % but less than 20 % in a company resident in Portugal to obtain exemption from the tax withheld at source on dividends distributed by the company resident in Portugal and therefore subjects those dividends to economic double taxation, whereas, if the dividends are distributed to shareholder companies resident in Portugal with the same kind of holdings, such economic double taxation is avoided. Where a

Member State relies on a convention for the avoidance of double taxation concluded with another Member State, it is for the national court to establish whether account should be taken, in the main proceedings, of that convention and, if so, to determine whether it enables the effects of the restriction on the free movement of capital to be neutralised.

2. Articles 49 TFEU and 54 TFEU preclude the legislation of a Member State, such as that at issue in the main proceedings, which permits a company resident in another Member State with a holding greater than 20 % in a company resident in Portugal to secure repayment of the tax deducted at source on dividends distributed by the company resident in Portugal only if it has had such a holding for an interrupted period of two years, and thus delays the elimination of economic double taxation by comparison with shareholder companies resident in Portugal with the same kind of shareholdings. Where a Member State relies on a convention for the avoidance of double taxation concluded with another Member State, it is for the national court to establish whether account should be taken, in the main proceedings, of that convention and, if so, to determine whether it enables the effects of the restriction on the free movement of capital to be neutralised.

⁽¹⁾ OJ C 130, 30.4.2011.

**Order of the Court of 12 July 2012 — Densmore Ronald
Dover v European Parliament**

(Case C-278/11 P) ⁽¹⁾

*(Appeal — Rules governing the payment of expenses and
allowances to Members of the European Parliament —
Review of the use of allowances — Parliamentary assistance
allowance — Justification of expenditure — Recovery of
undue payments)*

(2012/C 366/30)

Language of the case: English

Parties

Appellant: Densmore Ronald Dover (represented by: D. Vaughan QC, M. Lester, Barrister and R. Collard, Solicitor)

Other party to the proceedings: European Parliament (represented by: D. Moore and M. Windisch, acting as Agents)

Re:

Appeal against the judgment of the General Court (Eighth Chamber) of 24 March 2011 in Case T-149/09 *Dover v European Parliament* by which the General Court annulled in part the Decision of the Secretary-General of the European Parliament of 29 January 2009 to recover certain sums unduly paid to the appellant by way of expenses and parliamentary allowances