

Understanding opinion 2/15

Introducing the case

- what was asked to the court?
- why does it matter ?

What were the key legal question addressed?

- « facultative & obligatory mixity »

What did the court decide?

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Is there a way out for the commission (rephrasing the investment chapter or other creative ways?)

Upcoming political and strategic questions – risks and opportunities

Q&A

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<http://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1495540066548&uri=CELEX:62015CV0002%2801%29>

I – The request for an opinion

1. The request for an opinion submitted to the Court by the European Commission is worded as follows:

‘Does the Union have the requisite competence to sign and conclude alone the Free Trade Agreement with Singapore? More specifically,

1. which provisions of the agreement fall within the Union’s exclusive competence?
 2. which provisions of the agreement fall within the Union’s shared competence?
and
 3. is there any provision of the agreement that falls within the exclusive competence of the Member States?’
2. The Commission annexed to its request for an opinion the text of the agreement as envisaged on 10 July 2015, the date on which the request was made.

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What were the key legal question addressed?

- « facultative & obligatory mixity »
- which provisions were under scrutiny?

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What did the court say?

- On competence
- On future MS involvement

« Two areas would require ratification at the national level. These involve “non-direct foreign investment (‘portfolio’ investments made without any intention to influence the management and control of an undertaking) and the regime governing dispute settlement between investors and states. » (ICTSD)

<http://www.ictsd.org/bridges-news/bridges/news/european-court-of-justice-rules-on-eu-competence-in-singapore-trade-deal>

- On compatibility with EU treaties



Paul Magnette ✓

@PaulMagnette

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La Cour européenne confirme que la Wallonie à bien son mot à dire sur les conflits multinationales-États dans les accords commerciaux **#CETA**

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Cecilia Malmström ✓

@MalmstromEU

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About the ECJ opinion on the Singapore trade agreement: This gives us very welcome & much-needed clarity about how to interpret EU Treaties.

12:27 PM - 16 May 2017

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Singapore trade deal cannot be concluded by EU alone, ECJ rules

By Sam Morgan | EURACTIV.com

16. Mai 2017

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In its current form, the EU-Singapore deal will need national level approval, opening the door to a repeat of the CETA-Wallonia debacle seen last October. [Shutterstock]

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The European Union will have to secure approval from national parliaments in order to finalise a free trade deal with Singapore. The bloc's top court ruled that the agreement in "its current form" cannot be handled by the Commission acting alone.

The European Court of Justice (ECJ) today (16 May) said that the European Commission cannot finalise a free trade agreement (FTA) with Singapore, after the EU executive had asked for clarity on whether it has exclusive competence to handle the talks.

Today's decision follows a December opinion issued by the Court's Advocate-General, Eleanor Sharpston, who also decided that the agreement covered a number of issues that are shared competence between the member states and the EU.

It was the Commission itself that asked the ECJ to clarify if it alone can conclude the agreement. The executive chose the Singapore deal because of how similar it is in structure



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The Singapore Opinion or the End of Mixity as We Know It

David Kleimann, Gesa Kück
01.23. Mai 2017



David Kleimann ist Doktorand am Europäischen Hochschulinstitut (EUI) in Florenz.

Last week on Tuesday, with its decision in [Opinion 2/15](#) on the Union's competence to conclude 'new generation' EU trade and investment agreements, the Court dropped a bombshell. The Court's ruling is set to significantly simplify the EU's economic relations with third countries. If the Commission, the Council and the member states had demanded clarity as to which institutions may legitimately pursue the Union's external action objectives in its commercial relations: clarity is what they earned. The decision has the strong potential to facilitate an 'EU-only' signing and conclusion of future EU trade agreements considerably. At the same time, as we argue below, the Court's reasoning entails a number of contradicting elements that may add confusion over the legal parameters of post-Lisbon EU external relations conduct.

Overall, the Court created the conditions for more effective, efficient, and politically legitimate EU external economic action while preserving its own credibility as the ultimate EU arbiter. Indeed, the Court has done no less than giving a clear mandate to the institutions of the EU, while placing a good amount of investment related homework on the desks of the member states.

<http://verfassungsblog.de/the-singapore-opinion-or-the-end-of-mixity-as-we-know-it/>

« The decision has the strong potential to facilitate an 'EU-only' signing and conclusion of future EU trade agreements considerably. »

« With its decision in Opinion 2/15, the Court provides permissive guidelines as to how mixed treaty making can be avoided through alternative design of EU trade and investment agreements. »

« [...] rather historic conclusion that the EUSFTA provisions on labour rights and environmental protection fall under the EU exclusive competence »

ECJ ruling EU-Singapore provides needed legal clarity

Press release

16 May 2017



Today, the European Court of Justice gave its judgement on which parts of the EU-Singapore Trade Agreement fall into the EU's exclusive competence. The Court ruled that most parts of the agreement fall within the EU's exclusive competence. Member of the European Parliament Marietje Schaake (ALDE/D66), responds.

International trade

trade deal

<https://marietjeschaake.eu/en/ecj-ruling-eu-singapore-provides-needed-legal-clarity>

“We must now consider **whether it would be better to aim for negotiating mandates and agreements which can be ratified at EU level and touch only on EU competence**, for example by **negotiating the 'mixed parts' of the agreement on a separate track**. In the past, mixed agreements have taken years to achieve full ratification. In order to conduct an ambitious trade policy and make sure our citizens feel the benefits of rules-based trade, swift ratification of agreements is key.”

“While the Court has answered a legal question, **Member States** now need to answer a political one. **How do they want to make sure that the EU can remain a global trading power and a credible negotiator on the world stage?** In the face of protectionist mercantilism from the US and renewed assertiveness from China, the EU needs to be ambitious. Even if national Parliaments do not have direct vote on ratification, they still have plenty of avenues to be actively involved in negotiations, because they have access to documents and are always in a position to hold their national trade minister to account.”

German MEP Bernd Lange (S&D group) and chair of the European Parliament's Committee on International Trade said: "The ruling today by the European Court of Justice provided clarity, which has gone missing from our trade policy lately. By defining which exclusive competences the EU enjoys and which competences it shares with the member states, the ECJ has settled a contentious issue.

"The ball is now in the court of politics. It is now for us policy-makers to draw the necessary conclusions and determine how to bring the common commercial policy forward in a way that preserves its strength, legitimacy and coherence."

Cefic, the European Chemical Industry Council, said: "While respecting the role of the ECJ in defining such matters, **this decision will complicate the adoption of future FTAs and undermine the reliability of the EU as a trading partner, as national and some regional parliaments will need to ratify mixed agreements as well.** This could also result in a split into EU-only competence and mixed competence agreements covering investment protection at a later stage, limiting the ambition to conclude deep and comprehensive deals.

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Is there a way out for the commission (rephrasing the investment chapter or other creative ways?)

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Risks and opportunities

Risks:

- ISDS goes back to the Member States
- FTAs without investment concluded by EU
- Commission will continue with weak environmental and social provisions

Opportunities

- ISDS might get killed
- Environmental and social provisions might be strengthened in order to make FTAs mixed

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Q&A