



## The Opinion of the European Court of Justice on the EU-Singapore Trade Agreement and the Division of Competences in Trade Policy

Factsheet

*September 2017*

### **Why did the Commission request in 2015 the Opinion of the Court of Justice on competences in trade policy?**

The vast majority of matters included in EU trade agreements have been regarded by the EU institutions and the Member States as exclusive EU competence for a considerable period of time. However, the Commission and Member States had different interpretations regarding the competence for, in particular, transport services, sustainable development and investment.

These divergent views became more apparent with the entry into force of the Treaty of Lisbon, approved by Member States, the European Parliament and ratified by all national parliaments, that extended the EU's competence in the area of trade and investment.

In the interest of all parties, the Commission wanted to get legal clarity and thus referred the question on the allocation of competences between the European Union and the Member States and the legal basis for concluding the EU-Singapore trade agreement to the Court of Justice of the EU on 10 July 2015.

### **Did the Commission request the involvement of the Court in the past on similar questions?**

It has often been the case that the addition of new activities to the trade sphere has led to the EU institutions turning to the Court to establish the exact division of competence. This happened for example, when trade activities started to overlap with development policy (the GSP ruling of the Court of Justice of 1987) and when the World Trade Organisation (WTO) was founded, expanding beyond trade in goods to trade in services and intellectual property (Opinion 1/94).

These judgments provided stability and clarity until the scope of activities expanded again.

### **Why did the Commission choose the agreement with Singapore?**

The EU-Singapore agreement was the first EU trade agreement after the entry into force of the Lisbon Treaty for which a complete draft text was available.

It is a comprehensive agreement that included the trade policy areas on which the Commission and the Member States had differences of opinion with regard to competence.

The European Union and Singapore concluded their talks on protection of investments on 17 October 2014. This completed the negotiations for the EU-Singapore Free Trade Agreement, after its other parts were initialled already in September 2013.

### **What's the Commission's view of the Opinion adopted by the Court in May 2017?**

The Commission welcomed the Opinion of the Court because it provided the clarity we had asked for. The Opinion is not about winning or losing but about legal clarity and stability on competences and responsibilities for the future of EU trade agreements. It is in the interests of the European Union's institutions, Member States, citizens and businesses to have this clarity. It is also essential for the EU to be able to reassure our trade partners on the predictability of our procedures.

### **What are the main features of the Court's opinion?**

1) In its Opinion delivered on 16 May 2017, the Court confirmed the **EU's exclusive competence** in a number of key areas (competences that can only be exercised at EU level as set out in the EU Treaties). Article 3 of the Treaty on the Functioning of the European Union (TFEU) states that the Union has exclusive competence for the common commercial policy:

- trade in goods, including regulatory matters
- trade in services, including mutual recognition agreements and including all transport services
- intellectual property in its entirety
- all public procurement matters
- market access in the area of investment
- investment protection as far as it concerns foreign direct investment
- trade and sustainable development in its entirety
- the termination of Member State bilateral investment agreements for the parts concerning exclusive competence

- state-to-state dispute settlement

2) Only two matters are identified as **shared competence** (matters that can be exercised by the EU or by Member States). Whether to exercise that competence is for the Council to decide on a proposal from the Commission:

- portfolio investment
- investor state dispute settlement

3) No matters are considered to be **exclusive Member State competence** (matters that can never be exercised at EU level).

### **What implications will this ruling have for the architecture of EU trade agreements?**

Following the Court's Opinion, the debate on the best architecture for EU trade agreements and investment protection agreements is ongoing. The collective aim of the European Institutions (the Commission, the Council and the European Parliament) will be to continue this discussion and jointly find the best solution to this question.

### **Are there currently any trade agreements that were ratified only at EU level?**

The vast majority of matters covered by EU trade policy have been regarded by the EU institutions and the Member States as exclusive EU competence for a considerable period of time. Much important trade legislation is handled on this basis. For example, the Regulation establishing the Generalised System of Preferences (GSP) which contains an important sustainable development component is adopted only by the EU, as are all trade defence measures. Many important agreements are also ratified only by the EU, for example the Information Technology Agreement, the Trade Facilitation Agreement, the TRIPS (intellectual property) Amendment on Public Health and the Government Procurement Agreement.

### **Will the Commission use this possibility to split trade agreements to avoid submitting them to national ratification?**

No. Trade agreements are made with citizens and their representatives, Parliaments – not against them. The EU process for trade agreements is fully democratic and the European Commission has over the past two years taken big leaps forward to make the negotiating process of trade agreements much more transparent and inclusive, involving national Parliaments and civil society. The process is now comparable to the process used for adopting EU regulations or directives for the EU single market.

The opinion of the European Court of Justice on the EU-Singapore trade agreement

---

It should be clear that the EU Treaties provide that trade agreements that exclusively include matters fully covered by the common commercial policy are decided at European level, with both Council and the European Parliament providing full democratic scrutiny. National governments must agree in the Council on negotiating directives before the talks are launched and they must approve the final text of the deal.

Even in the case of these EU-only trade agreements, ministers representing their Member State in the Council are fully accountable to their national Parliaments in accordance with the Constitution of the Member State concerned. National governments are free to decide how to ensure that their own legislatures are adequately involved in such negotiations in accordance with their own national rules and procedures. The Commission encourages all Member States to involve their Parliaments in the EU decision-making process for trade policy as early as possible in the process.

It should be recalled that the Council and Commission are legally obliged to ensure that the agreements negotiated fully comply with EU legislation.

---