



Court of Justice of the European Union

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Advocate General's Opinion in Opinion procedure 2/15

Press and Information

Advocate General Sharpston considers that the Singapore Free Trade Agreement can only be concluded by the European Union and the Member States acting jointly

Not all parts of the agreement fall within the EU's exclusive competence and therefore the agreement cannot be concluded without the participation of all of the Member States

The Advocate General's Opinion is final but may be subject to editorial revision once all the language versions are available.

On 20 September 2013, the EU and Singapore initialled the text of a Free Trade Agreement (the 'EUSFTA'). The EUSFTA provides that it is to be concluded as an agreement between the EU and the Republic of Singapore, without participation of the Member States.

The Commission seeks an Opinion from the Court under Article 218(11) TFEU on the allocation of competence between the EU and the Member States as regards the EUSFTA. This procedure allows a Member State, the European Parliament, the Council or the Commission to ask the Court to give its view on whether an agreement between the EU and a third country is compatible with the Treaties. Where the Opinion is adverse, the agreement must be amended (or the Treaties revised) before it can enter into force.

The Commission argues that the EU has exclusive competence to conclude the agreement. The European Parliament generally agrees with the Commission. The Council and the Governments of all Member States that submitted written observations¹ contend that the EU cannot conclude the agreement on its own because certain parts of the EUSFTA fall within the shared competence of the EU and the Member States, and even the exclusive competence of the Member States.

In her Opinion today², **Advocate General Eleanor Sharpston considers that the EUSFTA can only be concluded by the EU and the Member States acting jointly.**

The Advocate General begins by setting out the principles established in the Court's case-law and partially codified by the Treaty of Lisbon in relation to EU exclusive competences and the competences that the EU shares with the Member States, both internally within the territory of the EU and externally in its relations with third States. She then applies these principles to analyse the EUSFTA, Chapter by Chapter.

She concludes that **the EU enjoys exclusive external competence** as regards the parts of the EUSFTA which cover the following matters:

- objectives and general definitions;
- trade in goods;

¹ Written observations were submitted by all Member States with the exception of Belgium, Croatia, Estonia and Sweden. Belgium did, however, attend the hearing and make oral submissions.

² In accordance with the normal procedure for cases before the Court of Justice, the Opinion of the Advocate General is delivered first. The Court's decision, which in the Article 218(11) TFEU procedure is called its 'Opinion', will be delivered in 2017.

- trade and investment in renewable energy generation;
- trade in services and government procurement, under exclusion of those parts of the EUSFTA applying to transport services and services inherently linked to transport services;
- foreign direct investment;
- the commercial aspects of intellectual property rights;
- competition and related matters;
- trade and sustainable development in so far as the provisions in question primarily relate to commercial policy instruments;
- the conservation of marine and biological resources;
- trade in rail and road transport services; and
- dispute settlement, mediation and transparency mechanisms in so far as those provisions apply to (and are therefore ancillary to) the parts of the agreement for which the EU enjoys exclusive external competence.

She concludes that **the EU's external competence is shared with the Member States** with respect to the following matters:

- provisions on trade in air transport services, maritime transport services and transport by inland waterway, including services inherently linked to those transport services; - types of investment other than foreign direct investment;
- provisions on government procurement in so far as they apply to transport services and services inherently linked to transport services;
- provisions relating to the non-commercial aspects of intellectual property rights;
- provisions laying down fundamental labour and environmental standards and falling within the scope of either social policy or environmental policy; and
- dispute settlement, mediation and transparency mechanisms in so far as those provisions apply to (and are therefore ancillary to) the parts of the agreement for which the EU enjoys shared external competence.

The Advocate General adds that, in her view, **the EU has no external competence to agree to be bound by that part of the EUSFTA which terminates bilateral agreements** concluded between certain Member States and Singapore. In her view, **that competence belongs exclusively to the Member States** concerned.

While the Advocate General notes that difficulties may arise from a ratification process involving all of the Member States alongside the EU, she considers that that cannot affect the question of who has competence to conclude the agreement.

NOTE: A Member State, the European Parliament, the Council or the Commission may seek the Opinion of the Court of Justice as to whether an agreement envisaged is compatible with the Treaties. If the Opinion of the Court is adverse, the agreement envisaged may not enter into force unless it is amended or the Treaties are revised.

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The [full text](#) of the Opinion is published on the CURIA website on the day of delivery.

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Pictures of the delivery of the Opinion are available from "[Europe by Satellite](#)" ☎ (+32) 2 2964106