



Press and Information

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Advocate General's Opinion in Case C-457/18  
Republic of Slovenia v Republic of Croatia

## **Advocate General Pikamäe: the Court of Justice does not have jurisdiction to rule on an international boundary dispute that falls outside the scope of EU law**

*The infringements of EU law of which Slovenia accuses Croatia are ancillary to the issue of determining the boundary between those two States, which is a matter of public international law*

The Republic of Slovenia and the Republic of Croatia became members of the EU on 1 May 2004 and 1 July 2013, respectively.

The political conditions for Croatia's accession to the EU included, inter alia, the settlement of its boundary dispute with Slovenia. Accordingly, in November 2009, the two Member States concerned signed an arbitration agreement in which they undertook to submit the dispute to an international arbitral tribunal set up for that purpose. At the time when the accession treaty for Croatia was signed in 2011, the arbitration agreement had been entered into but the arbitration proceedings had not yet commenced.

The arbitral tribunal was established in 2012. The written proceedings before the arbitral tribunal commenced in February 2013 and the hearing was held in June 2014. However, during the arbitration proceedings, on account of an *ex parte* communication between the arbitrator appointed by Slovenia and that State's agent, Croatia applied to the arbitral tribunal for the proceedings to be stayed and subsequently notified Slovenia and the tribunal of its decision to terminate the arbitration agreement. Croatia took no further part in the arbitration proceedings. After its composition was changed, the arbitral tribunal continued its work and, on 29 June 2017, issued an arbitration award determining the land and maritime boundaries of the two States concerned.

Since Croatia contested the validity of the arbitration award and refused to be bound by it, Slovenia brought infringement proceedings under Article 259 TFEU. Slovenia first referred the matter to the Commission and then, when the Commission did not issue a reasoned opinion, brought an action before the Court of Justice.

Slovenia claims that, by failing to honour the commitment it made during the process of accession to the EU to comply with the forthcoming arbitration award, the boundary delimited by that award and the other obligations arising under it, Croatia is refusing to respect the value of the rule of law and the principles of sincere cooperation and *res judicata*. Slovenia also submits that Croatia is preventing it from fully exercising its sovereignty throughout its mainland and maritime territory. By doing so, Croatia is in breach of the duty of sincere cooperation and is jeopardising the attainment of the objectives of the EU. Finally, Slovenia asserts that Croatia is preventing it from applying EU secondary law, in particular in relation to the common fisheries policy, border control and maritime spatial planning. Croatia, on the other hand, submits that the Court of Justice has no jurisdiction to rule on the present case and that, in any event, the action brought by Slovenia is inadmissible.

The Court of Justice decided to examine separately the issues relating to its jurisdiction and the admissibility of the action, before ruling, if required, on the substance of the case.

In today's Opinion, **Advocate General Priit Pikamäe proposes that the Court of Justice declare that it does not have jurisdiction to hear the action brought by Slovenia.**

First of all, the Advocate General points out that the purpose of an action for failure to fulfil obligations is to obtain a declaration that the conduct of a Member State is in breach of EU law and to terminate that conduct. He is therefore of the view that it is necessary to examine the relationship of the arbitration agreement and the arbitration award in question with EU law and to determine whether the EU is bound by them.

In that regard, the Advocate General notes that the situations in which the EU is bound by international law are well-established; it is bound by international conventions concluded by the EU pursuant to the provisions of the Treaties, by international conventions where the EU assumes powers previously exercised by the Member States, and by rules of customary international law when the EU exercises its powers. International conventions that do not fall within those categories are not acts of the EU and do not bind it. Relying on the case-law of the Court of Justice, the Advocate General points out that the territorial scope of the Treaties is an objective fact predetermined by the Member States which the EU has to accept. Consequently, the Advocate General is of the view that **delimitation of national territory does not fall within the sphere of competence of the EU or, therefore, of the Court of Justice.**

Next, the Advocate General examines Slovenia's heads of claim. As regards the relationship between, on the one hand, the arbitration agreement and the arbitration award and, on the other hand, EU law, the Advocate General notes that it does not fall within any of the situations in which the EU is bound by international law.

Concerning the alleged infringement of the value of the rule of law and of the principle of sincere cooperation, the Advocate General is of the view that those matters are merely ancillary to the issue of delimitation of the land and maritime boundaries between the two Member States concerned and that, accordingly, the Court does not have jurisdiction to hear and determine those complaints. Furthermore, the Advocate General states that, according to the case-law of the Court of Justice, the principle of sincere cooperation has constituted an independent basis for obligations in cases where the EU was party to a mixed agreement or where the obligations being fulfilled arose under the EU Treaties. However, the conduct at issue does not fall within either of those two situations.

Regarding the alleged failure to fulfil obligations in relation to the common fisheries policy, border control and maritime spatial planning, the Advocate General observes that Slovenia is relying on the premiss that the boundary has been determined by the arbitration award. However, the Advocate General emphasises that the award has not been implemented in the relations between the two Member States concerned. He is therefore of the opinion that, from an EU law perspective, the boundary between those two Member States has not been established. The Advocate General infers that Slovenia is seeking, by implication, to have the arbitration award implemented, which falls outside the EU's sphere of competence.

The Advocate General concludes that **the alleged infringements of EU law are ancillary to the issue of determining the boundary between Croatia and Slovenia. Determining that boundary is, by its very nature, a matter of public international law in respect of which the Court does not have jurisdiction.**

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**NOTE:** An action for failure to fulfil obligations directed against a Member State which has failed to comply with its obligations under European Union law may be brought by the Commission or by another Member State. If the Court of Justice finds that there has been a failure to fulfil obligations, the Member State concerned must comply with the Court's judgment without delay.

Where the Commission considers that the Member State has not complied with the judgment, it may bring a further action seeking financial penalties. However, if measures transposing a directive have not been notified to the Commission, the Court of Justice can, on a proposal from the Commission, impose penalties at the stage of the initial judgment.

**NOTE:** The Advocate General's Opinion is not binding on the Court of Justice. It is the role of the Advocates General to propose to the Court, in complete independence, a legal solution to the cases for which they are responsible. The Judges of the Court are now beginning their deliberations in this case. Judgment will be given at a later date.

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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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