

ECJ'S OPINION ON EU-SINGAPORE FREE TRADE AGREEMENT COULD SMOOTH THE WAY FOR A POST-BREXIT TRADE DEAL

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Legal Briefings

The ECJ ruling has provided much needed clarity that EU officials have exclusive powers to negotiate international trade deals without ratification by national and regional parliaments. A move that could make it easier to strike a trade deal between the UK and EU following Brexit.

ACHIEVING A SMOOTH TRANSITION POST-BREXIT

We think this could assist the United Kingdom in achieving its objective of a "new, comprehensive, bold and ambitious" FTA with the European Union following Brexit.

The ECJ ruling could substantially reduce the risk of any future EU-UK free trade agreement getting bogged down in the EU national parliaments, opening the way for an FTA to be agreed relatively quickly by a qualified majority vote of EU member states. It clarifies that areas covered by EU competence include all goods and services, including transport services, as well as intellectual property rights, competition policy, labour and environmental standards and the rules in relation to exchange of information. This means the most important parts of a post-Brexit free trade deal could enter into force without the approval of national parliaments.

"The opinion provides much needed clarity of the law and will facilitate the conclusion of FTAs by the Union alone in the future and help avoid the inordinate delays that currently occur in the conclusion of mixed agreements." [Lode Van Den Hende](#)

The surprising element of the Opinion is the finding that Investor-State Dispute Settlement provisions cannot be agreed by the Union alone, apparently because they are "liable to remove disputes from the jurisdiction of the courts of the Member States or of the European Union".

This will, no doubt, be welcomed by those parts of a civil society that have resisted so vigorously against the inclusion of Investor-State Dispute Settlement provisions in the proposed Transatlantic Trade and Investment Partnership with the United States and the Comprehensive Economic and Trade Agreement with Canada if it leads to the abandonment of such provisions.

"There is a certain irony in this consequence since the United Kingdom has, as a Member State, been one of the most vigorous opponents of EU exclusive competence." [Eric White](#)

Overall, we believe the future EU-UK trade agreement would try to limit such disruption to trade and investment - a welcomed aspect for businesses planning for the risks and opportunities presented by Brexit. As discussed in a recent article published in the Global Trade and Customs Journal such provisions also give rise to a number of legal problems under Union law quite apart from the issue of competence (although the Court made clear that it was not opining on the substantive compatibility of any aspect of the agreement with Union law).

Read our bulletin released on 16 May for further background: ['The European Court of Justice renders its opinion on the EU-Singapore free trade agreement'](#)

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KEY CONTACTS

If you have any questions, or would like to know how this might affect your business, phone, or email these key contacts.



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