

# EU FTAs: mixed fortunes

Blog post by Associate Adviser Guillaume Ferlet, 22 December 2016

---

The EU Advocate General Eleanor Sharpston yesterday delivered an important preliminary conclusion in the European Court of Justice's (ECJ) review of the ratification requirements of the EU-Singapore FTA. This sounds like an arcane question but is actually a big political issue. Because the question Sharpston has answered is the question of whether or not EU trade deals need to be ratified not only in Brussels, but by parliaments in EU member states. Sharpston has effectively today said that Wallonia should always get a say.

The European Commission argued in the case that the Singapore agreement (and by extension future EU FTAs) should only be ratified at EU-level, because they come within the EU's exclusive competence over the common commercial policy. The Advocate General has gone the other way. She has found the FTA with Singapore to be a mixed agreement, implicating policy areas that remain a national competence in the EU, citing (among other areas): investment and procurement in transport services; certain aspects of intellectual property rights; labour and environmental standards; and expropriation rules in the field of investment protection. Ergo, she says, it needs national ratification.

This might seem like a technical detail, but it has real and important implications for the viability of EU FTAs. The involvement of national (and sub-national) parliaments has the potential to turn the ratification process into a protracted and contested one. As a reminder, it took five years for all EU member states to ratify the EU-Korea FTA. It also adds uncertainty to the outcome, as exemplified by the Walloon parliament's recent opposition to the EU-Canada FTA.

Whatever else this might mean, it is not good for the Commission's credibility as a trade negotiator. All ratification processes add an element of uncertainty. But how many trade partners will not worry about the EU's ability to deliver when individual EU states, or even regions like Wallonia, can scupper deals at the ratification stage? The other important implication is for the speed and ease with which a possible future EU-UK trade deal might be put in place after Brexit. There is perhaps some small irony here in the opinion being delivered by a British lawyer.

In light of today's opinion, the odds seem stacked against the Commission's position. Of course, the ECJ could still make a different political judgment in its final decision in the spring, but it frequently follows the opinions of its Advocates General. Besides, ECJ judges will know that in the current volatile political environment, any decision perceived as taking powers away from national parliaments would be poorly received. Mixity might be here to stay in EU trade policy, at least until any future treaty revision and new transfer of powers.