

**Opinion of the Court (Full Court) of 16 May 2017 — European Commission****(Opinion 2/15) <sup>(1)</sup>**

*(Opinion pursuant to Article 218(11) TFEU — Free Trade Agreement between the European Union and the Republic of Singapore — ‘New generation’ trade agreement negotiated after the entry into force of the EU and FEU Treaties — Competence to conclude the agreement — Article 3(1)(e) TFEU — Common commercial policy — Article 207(1) TFEU — Trade in goods and services — Foreign direct investment — Public procurement — Commercial aspects of intellectual property — Competition — Trade with third States and sustainable development — Social protection of workers — Environmental protection — Article 207(5) TFEU — Services in the field of transport — Article 3(2) TFEU — International agreement which may affect common rules or alter their scope — Rules of secondary EU law concerning freedom to provide services in the field of transport — Non-direct foreign investment — Article 216 TFEU — Agreement necessary in order to achieve one of the objectives of the Treaties — Free movement of capital and of payments between Member States and third States — Succession of treaties concerning investment — Replacement of the investment agreements between Member States and the Republic of Singapore — Institutional provisions of the agreement — Investor-State dispute settlement — Dispute settlement between the Parties)*

(2017/C 239/03)

Language of the procedure: all the official languages

**Requested by**

European Commission (represented by: U. Wölker, B. De Meester, R. Vidal-Puig and M. Kocjan, acting as Agents)

**Operative part**

The Free Trade Agreement between the European Union and the Republic of Singapore falls within the exclusive competence of the European Union, with the exception of the following provisions, which fall within a competence shared between the European Union and the Member States:

- the provisions of Section A (Investment Protection) of Chapter 9 (Investment) of that agreement, in so far as they relate to non-direct investment between the European Union and the Republic of Singapore;
- the provisions of Section B (Investor-State Dispute Settlement) of Chapter 9; and
- the provisions of Chapters 1 (Objectives and General Definitions), 14 (Transparency), 15 (Dispute Settlement between the Parties), 16 (Mediation Mechanism) and 17 (Institutional, General and Final Provisions) of that agreement, in so far as those provisions relate to the provisions of Chapter 9 and to the extent that the latter fall within a competence shared between the European Union and the Member States.

<sup>(1)</sup> OJ C 363, 3.11.2015.

**Judgment of the Court (First Chamber) of 17 May 2017 (request for a preliminary ruling from the Grondwettelijk Hof — Belgium) — X v Ministerraad****(Case C-68/15) <sup>(1)</sup>**

*(Reference for a preliminary ruling — Freedom of establishment — Parent-Subsidiary Directive — Tax legislation — Tax on company profits — Distribution of dividends — Withholding tax — Double taxation — ‘Fairness tax’)*

(2017/C 239/04)

Language of the case: Dutch

**Referring court**

Grondwettelijk Hof

**Parties to the main proceedings**

Applicant: X

Defendant: Ministerraad

**Operative part of the judgment**

1. Freedom of establishment must be interpreted as not precluding tax legislation of a Member State, such as that at issue in the main proceedings, under which both a non-resident company conducting an economic activity in that Member State through a permanent establishment and a resident company, including the resident subsidiary of a non-resident company, are subject to a tax such as the 'fairness tax' when they distribute dividends which, as a result of the use of certain tax advantages provided for by the national tax system, are not included in their final taxable profits, provided that the method of determining the taxable amount of that tax does not in fact lead to that non-resident company being treated in a less advantageous manner than a resident company, which is for the referring court to ascertain.
2. Article 5 of Council Directive 2011/96/EU of 30 November 2011 on the common system of taxation applicable in the case of parent companies and subsidiaries of different Member States must be interpreted as not precluding tax legislation of a Member State, such as that at issue in the main proceedings, providing for a tax such as the 'fairness tax', to which non-resident companies conducting an economic activity in that Member State through a permanent establishment and resident companies, including the resident subsidiary of a non-resident company, are subject when they distribute dividends which, as a result of the use of certain tax advantages provided for by the national tax system, are not included in their final taxable profits.
3. Article 4(1)(a) of Directive 2011/96, read in conjunction with Article 4(3) thereof, must be interpreted as precluding national tax legislation, such as that at issue in the main proceedings, in so far as that legislation, in a situation where profits received by a parent company from its subsidiary are distributed by the parent company after the year in which they were received, has the consequence of subjecting those profits to taxation exceeding the 5 % ceiling provided for in that provision.

<sup>(1)</sup> OJ C 146, 4.5.2015.

**Judgment of the Court (Grand Chamber) of 10 May 2017 (request for a preliminary ruling from the Centrale Raad van Beroep — Netherlands) — H.C. Chavez-Vilchez and Others v Raad van bestuur van de Sociale verzekeringsbank and Others**

(Case C-133/15) <sup>(1)</sup>

**(Reference for a preliminary ruling — Union citizenship — Article 20 TFEU — Access to social assistance and child benefit conditional on right of residence in a Member State — Third-country national responsible for the primary day-to-day care of her minor child, a national of that Member State — Obligation on the third-country national to establish that the other parent, a national of that Member State, is not capable of caring for the child — Refusal of residence possibly obliging the child to leave the territory of the Member State, or the territory of the European Union)**

(2017/C 239/05)

Language of the case: Dutch

**Referring court**

Centrale Raad van Beroep