The Court of Justice of the European Union as an arbitrator in tax treaty disputes between the Member States?

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1. Introduction

Prof. Kleineman has brought invaluable contributions to different fields of private law. He is also an internationally acknowledged arbitrator. As a tax scholar, I therefore chose to dedicate my contribution to this Festschrift to arbitration in tax matters, in an attempt to write a piece that is not completely unrelated to Prof. Kleineman's areas of interest. This contribution concerns the rather unusual situation where the Court of Justice of the European Union (hereinafter sometimes referred to as the "CJEU") is appointed as arbitrator in relation to a dispute between two Member States. This role is even more unusual when it comes to disputes concerning the interpretation of a tax treaty concluded between two Member States. The starting point for this contribution is a ruling issued by the Grand Chamber of the Court of Justice, whereby the Court considered that it had jurisdiction to act as arbitrator to solve a conflict between two Member States in relation to the interpretation of a tax treaty.[1] This landmark case provides an opportunity to analyse the legal basis for the jurisdiction of the Court of Justice in relation to tax treaty disputes arising between the Member States, and, if the jurisdiction of the Court is confirmed, whether or not the Member States should seek to have tax treaty disputes solved in this manner. This contribution concerns tax treaty disputes, but it may also be relevant to other legal disciplines that are not unrelated to EU law and for which the Court of Justice might be an option for the resolution of cross-border disputes.

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1 See Case C-648/15, Republic of Austria v Federal Republic of Germany. For comments see e.g. Bob Michel, Austria v. Germany (Case C-648/15): The ECJ and Its New Tax Treaty Arbitration Hat, European Taxation, January 2018, pp. 2–13; Joris Luts and Caroline Kempeneers, Case C-648/15 Austria v. Germany: Jurisdiction and Powers of the CJ to Settle Tax Treaty Disputes Under Article 273 TFEU Article, EC Tax Review, 2018–1, pp. 5–18.

This contribution does not aim at exploring the topic comprehensively, but rather at discussing if the Court indeed has jurisdiction in relation to tax treaty disputes between two Member States. The way the CJEU solved the case is not analysed here. This contribution is structured as follows. Following this introductory section, section 2 provides a short background to the case. Section 3 focuses on whether or not the Court indeed has jurisdiction to act as an arbitrator in tax treaty disputes. Section 4 considers whether the dispute resolution directive may prevent the choice of the Court of Justice as arbitrator. A brief conclusion ends this contribution.

2. Background: the tax treaty concluded between Austria and Germany

The dispute concerned the taxation of interests and involved two Member States of the European Union, Austria and Germany. The case related to the taxation of interests from registered certificates (*Genusscheine*) acquired by an Austrian bank from a German bank. The allocation of taxing rights was dependent on the qualification of the interests according to the tax treaty: according to one interpretation – based on article 11(1) of the treaty – interests would be taxed exclusively in the State of residence of the beneficial owner of such interests. According to a second interpretation – based on article 11(2) of the treaty – interests would also be taxable in the State of source, if they were to be classified as "income from rights or debt-claims with participation in profits". The two Member States interpreted the tax treaty differently, thus leading to the double taxation of the interest income. This is a classical situation of double taxation originating from a conflict of qualification.

Tax treaty disputes may be subject to proceedings before domestic courts, but in many cases this is not the most suitable method to solve a cross-border dispute. A national court may only rule on the correct application of the law in its own country. If a domestic court considers that the tax administration of the same country has applied a tax treaty correctly, no remedy to the double taxation may be available. The taxpayer may have brought the case before a court in the wrong country. Therefore, in many cases it is more efficient to solve tax treaty disputes on the basis of cross-border dispute resolution mechanisms included in tax treaties. In this respect, the tax treaty between Austria and Germany contained, as most tax treaties do, an article on mutual agreement procedures between the contracting States. This is how the Court of Justice of the European Union got involved in the resolution of the dispute between Austria and Germany. Most tax treaties include a mutual agreement procedure, which is a non-binding

dispute resolution mechanism whereby the competent authorities of the contracting States shall "endeavour" to solve disputes, with no obligation to eventually eliminate double taxation. In 1990 the Member States of the European Union concluded an arbitration convention providing for a binding mandatory arbitration procedure, but that convention was limited to transfer pricing matters. The OECD Model Tax Convention contains since 2008 a binding mandatory arbitration procedure whereby arbitration is carried out by tax experts, and countries – mostly OECD members – have been slowly implementing in their tax treaties arbitration clauses inspired by the OECD model. However, neither the arbitration convention nor the OECD model refers to the Court of Justice of the European Union as an arbitrator. Nor do the arbitration clauses included in the tax treaties concluded by the Member States of the European Union, except for the tax treaty between Austria and Germany.

Article 25(5) of the tax treaty concluded between Austria and Germany on 24 August 2000, as amended by later protocols, provides as follows: "If any difficulty or doubt arising as to the interpretation or application of the Convention cannot be removed by the competent authorities by the use of the mutual agreement procedure as provided for by the foregoing paragraphs of this Article within a period of 3 years from the date of initiation of the procedure, the States upon application of a person covered by paragraph 1 shall be obliged to refer the case to arbitration proceedings before the European Court of Justice pursuant to Article 239 of the EC treaty".[2]

This way of resolving disputes with respect to the interpretation of a tax treaty is very unusual. It seems to contrast with what is normally aimed at under article 25(5) of the 2017 OECD Model Tax Convention, which enables a taxpayer to ask for the resolution of tax treaty disputes through arbitration when the competent authorities of the contracting States have not solved a situation of double taxation within a period of two years. Article 25(5) of the 2017 OECD Model Tax Convention is drafted as follows: "Where, a) under paragraph 1, a person has presented a case to the competent authority of a Contracting State on the basis that the actions of one or both of the Contracting States have resulted for that

[2] This text in English is an unofficial translation provided by the International Bureau of Fiscal Documentation. The authentic language of the Austria-Germany tax treaty is German, and article 25(5) is worded as follows in the German language: "Können Schwierigkeiten oder Zweifel, die bei der Auslegung oder Anwendung dieses Abkommens entstehen, von den zuständigen Behörden nicht internal market Verständigungsverfahren nach den vorstehenden Absätzen dieses Artikels innerhalb einer Frist von 3 Jahren ab der Verfahrenseinleitung beseitigt werden, sind auf Antrag der Person internal market Sinne des Absatzes 1 die Staaten verpflichtet, den Fall im Rahmen eines Schiedsverfahrens entsprechend Artikel 239 EG-Vertrag vor dem Gerichtshof der Europäischen Gemeinschaften anhängig zu machen".

person in taxation not in accordance with the provisions of this Convention, and b) the competent authorities are unable to reach an agreement to resolve that case pursuant to paragraph 2 within two years from the date when all the information required by the competent authorities in order to address the case has been provided to both competent authorities, any unresolved issues arising from the case shall be submitted to arbitration if the person so requests in writing. These unresolved issues shall not, however, be submitted to arbitration if a decision on these issues has already been rendered by a court or administrative tribunal of either State. Unless a person directly affected by the case does not accept the mutual agreement that implements the arbitration decision, that decision shall be binding on both Contracting States and shall be implemented notwithstanding any time limits in the domestic laws of these States. The competent authorities of the Contracting States shall by mutual agreement settle the mode of application of this paragraph."

In practice, arbitration in tax treaty cases would normally be carried out by an ad-hoc panel of independent tax experts. However, even if article 25(5) of the OECD Model does not refer to the Court of Justice of the European Union as a potential arbitrator, it does not explicitly exclude it. Article 25(5) is rather flexible with respect to the arbitration procedure. The text of article 25(5) does not precisely determine how to conduct the arbitration process: the last sentence of paragraph 5 of article 25 leaves the mode of application of the arbitration process to be settled by mutual agreement between the competent authorities, which could on a case-by-case basis designate the Court of Justice as arbitrator. Actually, even if there were no arbitration provision in a tax treaty, the contracting States would not be prevented from agreeing to arbitration on a case-by-case basis.[3] In addition, the commentary on article 25(5) does not generally recommend to precisely determine the procedural aspects of arbitration in the text of a tax treaty, mainly to provide some flexibility to the contracting States.[4]

It results from the above that a tax treaty concluded on the basis of the OECD Model Tax Convention does not exclude appointing the Court of Justice as an arbitrator, whether this choice is made in the text of the treaty or through a mutual agreement between the competent authorities of the contracting States. Therefore, the question of the possible jurisdiction of the Court of Justice to solve tax treaty disputes is not limited to the unusual situation where the Court is chosen as an arbitrator in the text of a tax treaty: the question is equally relevant in a case where an arbitration provision is drafted along the lines of the OECD Model and

[3] See paragraph 69 of the commentary on article 25 of the 2017 OECD Model Tax Convention.

[4] See paragraph 85 of the commentary on article 25 of the 2017 OECD Model Tax Convention.

the contracting States decide, through a mutual agreement between their competent authorities, to submit tax treaty disputes to arbitration by the Court of Justice. This leads me to investigating whether the Court indeed has jurisdiction to act as an arbitrator in tax treaty disputes.

3. Does the Court of Justice have jurisdiction to act as an arbitrator in tax treaty disputes?

The Austria-Germany tax treaty gives jurisdiction to the Court of Justice in accordance with "Article 239 of the EC treaty". The equivalent article in the Treaty on the Functioning of the European Union (TFEU) is Article 273.[5] Article 273 of the TFEU is worded as follows: "The Court of Justice shall have jurisdiction in any dispute between Member States which relates to the subject matter of the Treaties if the dispute is submitted to it under a special agreement between the parties".

An important question is, accordingly, whether a tax treaty dispute between two Member States should be considered as a dispute which relates to the "subject matter of the Treaties", i.e. the TFEU or the TEU. In the Austria vs Germany case, the Court found that the existence of a dispute between Member States was "beyond doubt".[6] Whether the dispute was related to the subject matter of the Treaties is more complex to determine. In his opinion, Advocate General Mengozzi compared different language versions of Article 273 TFEU, and concluded that the expression "related to" should be understood as a link, rather than a strong connection, to a subject matter of the Treaties.[7] This conclusion is mainly based on the French word "connexité", which indeed does not suppose a strong connection. The Court followed the recommendation of the Advocate General, considering that "related to" must be understood as a link rather than a requirement that the subject matter be the same".[8]

The next point to investigate was whether a dispute between two Member States on the interpretation of a tax treaty should be considered to have some link to the Treaties. The Advocate General emphasised that "Article 273 TFEU cannot be used as a means of settling inter-State disputes which are entirely removed or excessively distant from the subject matter of the

[5] See Tables of Equivalences, Official Journal of the European Union, 26.10.2012, C 326/363.

[6] See Case C-648/15, Republic of Austria v Federal Republic of Germany, point 20.

[7] See Opinion of Advocate General Mengozzi delivered on 27 April 2017, Case C-648/15, Republic of Austria v Federal Republic of Germany, point 44.

[8] See Case C-648/15, Republic of Austria v Federal Republic of Germany, point 23.

Treaties".[9] Consequently, the Advocate General suggested that "(t)o avoid those pitfalls, there must (…) be a sufficient and objectively identifiable link between the dispute, within the meaning of Article 273 TFEU, and the action or objectives of the European Union",[10] which he found to be the case in relation to the tax treaty dispute at hand: although direct taxation remains within the fiscal sovereignty of the Member States, Advocate General Mengozzi considered that a tax treaty dispute relating to a situation of double taxation "is linked to the objective of the establishment of the internal market, as provided for in Article 3(3) TEU, in that the elimination or avoidance of double taxation by convention will ultimately assist the realisation of the internal market and the exercise of the freedoms of movement."[11] The Court adopted a similar position, considering that "the purpose and effect of the conclusion between two Member States of a convention avoiding double taxation is to eliminate or mitigate certain consequences resulting from the uncoordinated exercise of their powers of taxation, which is, by its nature, capable of restricting, discouraging or rendering less attractive the exercise of the freedoms of movement provided for in the TFEU".[12] This view is consistent with the case law of the Court, whether in the area of the fundamental freedoms or of State aid, whereby different tax measures, although not being harmonised, have nevertheless been found to have an influence on the achievement of the internal market. It is true that the Court of Justice at several instances considered that it did not have competence to rule on tax treaty matters,[13] but this did not concern cases where the Member States explicitly submitted tax treaty disputes to arbitration by the Court of Justice; therefore, the Austria vs Germany case does not seem inconsistent with previous case law.

The view according to which the prevention of double taxation is related to the achievement of the internal market, thus empowering the Court of Justice to have jurisdiction in such matters, seems to be also indirectly confirmed by the reasoning developed by the Court in the Achmea case. In Achmea, the Grand Chamber of the Court of Justice considered that EU law "must be regarded both as forming part of the law in force in every Member State and as deriving from an international agreement between the

[9] See Opinion of Advocate General Mengozzi delivered on 27 April 2017, Case C-648/15, Republic of Austria v Federal Republic of Germany, point 43.

[10] See Opinion of Advocate General Mengozzi delivered on 27 April 2017, Case C-648/15, Republic of Austria v Federal Republic of Germany, point 45.

[11] See Opinion of Advocate General Mengozzi delivered on 27 April 2017, Case C-648/15, Republic of Austria v Federal Republic of Germany, point 51.

[12] See Case C-648/15, Republic of Austria v Federal Republic of Germany, point 26.

[13] This point is e.g. made in one comment to the Austria vs Germany case: http://kluwertaxblog.com/2017/09/13/european-court-justice-court-arbitration-disputes-dtas-case-c-64815-austria-v-federal-republic-germany/.

Member States".[14] Therefore, it found that the dispute resolution mechanism in a bilateral investment treaty was in breach of articles 267 and 344 of the TFEU, since the dispute resolution mechanism could prevent the full application of EU law. Since the Court found that disputes that did not primarily concern EU law could have a connection with EU law, it is not unreasonable to consider that international double taxation may also have a connection with EU law, in particular the achievement of the internal market: when international double taxation occurs as a consequence of the exercise of the freedom of movement, such double taxation can hardly be considered not to have an effect, at least potential, on the achievement of the internal market. Therefore, conceptually, the Achmea case confirms the idea that areas of the law that do not stem from EU law but the correct application of which does have an impact on the objectives pursued by the Union, such as tax treaties, may justify the jurisdiction of the Court of Justice for the resolution of disputes in these areas.

In addition, the evolution of the case law of the Court in the area of direct taxation tends to grant EU law an increasing material content on the design and the interpretation of tax rules that have not been subject to harmonisation, which should result in such tax rules being deemed to be related to the subject matter of the Treaties: in the area of the fundamental freedoms, the finding of numerous types of rules in breach of EU law, and the design of principles of taxation as part of the proportionality test, tend to extend the consequences of EU law on direct taxation. This includes certain tax treaty rules that have been deemed incompatible with the fundamental freedoms.[15] In the area of State aid law, the finding of certain rules to be selective tends also to extend the reach of the State aid rules, despite the lack of harmonisation of direct taxation. Certain suggestions of the European Commission go even further in the potential impact of the State aid rules on direct taxation, in particular the idea developed in the 2016 notice on the notion of State aid and in several decisions whereby the State aid rules would, as such, have a material content, especially the obligation to apply the arm's length principle when taxing multinational enterprises.[16] If this idea were to be confirmed by the Court, tax treaties would unquestionably be related to a subject matter of the EU Treaties.

[14] See Case C-284/16, Slowakische Republik (Slovak Republic) v Achmea BV, para. 41.

[15] See e.g. Case C-307/97, Compagnie de Saint-Gobain, Zweigniederlassung Deutschland v Finanzamt Aachen-Innenstadt.

[16] See Commission Notice on the notion of State aid as referred to in Article 107(1) of the Treaty on the Functioning of the European Union, C/2016/2946, paragraph 172: "This arm's length principle necessarily forms part of the Commission's assessment of tax measures granted to group companies under Article 107(1) of the Treaty, independently of whether a Member State has incorporated this principle into its national legal system and in what form".

Before concluding this section, a nuance must be brought to the point made by the Court of Justice consisting in considering that the purpose of a tax treaty to eliminate double taxation is consistent with the objective of achievement of the internal market, thus empowering the Court with jurisdiction to solve tax treaty disputes. Since 2017 the OECD Model Tax Convention includes in its title, in addition to the elimination of double taxation, the prevention of tax evasion and avoidance. This twofold objective is also mentioned in the preamble to the model since the 2017 update. For tax treaties that follow the model, the question is thus raised whether the extended title and preamble may deprive tax treaties of objectives that are related to a subject matter of the Treaty. I do not believe that this might be the case. On the one hand, the Court of Justice has considered in several cases that double taxation is not, as such, in breach of EU law, and thus that EU law does not mandate the elimination of double taxation.[17] Yet the Court considered in Austria vs Germany that the elimination of double taxation was sufficiently connected to the objective of achievement of the internal market to have jurisdiction to solve tax treaty disputes. On the other hand, the prevention of tax avoidance is, in certain situations, an argument able to justify certain differences in treatment, in the areas of both the fundamental freedoms[18] and the State aid rules[19]. Therefore, there are no convincing arguments that could support the view according to which tax treaties concluded on the basis of the 2017 OECD Model Tax Convention would not anymore pursue objectives that are consistent with those aimed at by the Treaties. It should rather be the opposite: when tax treaties pursue the objective to eliminate double taxation as well as prevent tax evasion and avoidance, they are even more consistent with the aims of the EU Treaties.

To conclude, in my opinion the Court was right to consider that it had jurisdiction to rule on a dispute related to the interpretation of a tax treaty concluded between two Member States. Indeed, since double taxation may negatively affect the exercise of the freedoms of movement, a tax treaty aiming at preventing double taxation does have some connection with EU law, thereby empowering the Court of Justice to solve tax treaty disputes if the contracting States wish so and agree to it in a "special agreement".[20]

[17] See e.g. Case C-128/08, Damseaux.

[18] See e.g. Case C-196/04, Cadbury Schweppes plc and Cadbury Schweppes Overseas Ltd v Commissioners of Inland Revenue.

[19] See e.g. Case C-308/01, GIL Insurance.

[20] The requirement of a "special agreement" may not necessarily imply an obligation to explicitly appoint the Court of Justice in a tax treaty or in a mutual agreement. The appointment could be made by other means. In this respect see Case C-370/12, Thomas Pringle v Government of Ireland and Others, paragraph 172.

After having discussed the jurisdiction of the Court in relation to the resolution of tax treaty disputes, I now turn to analysing how arbitration by the Court of Justice relates to the dispute resolution directive.

4. The interaction between the Austria vs Germany case and the dispute resolution directive

The Member States of the European Union adopted in 2017 the dispute resolution directive.[21] A question relevant for this contribution is whether the directive may prevent the choice of the Court of Justice as an arbitrator to solve tax treaty disputes between the Member States. This does not seem to be the case. Firstly, the directive does not contain dispute resolution mechanisms that are compulsory to rely on. The directive provides an option to the taxpayer to elect to have tax treaty disputes subject to the dispute resolution mechanisms included in the directive: article 3(1) indicates that "(a)ny affected person shall be entitled to submit a complaint on a question in dispute to each of the competent authorities of each of the Member States concerned, requesting the resolution thereof". Therefore, the dispute resolution directive does not apply instead of the dispute resolution mechanisms already contained in the tax treaties concluded between the Member States: the mechanisms included in the directive are optional and apply in parallel to tax treaties, as the arbitration convention does.

Secondly, the procedure described at article 8 of the directive with respect to the composition of the advisory commission and the appointment of the "independent persons of standing" that compose the commission does not apply to the Court of Justice. The Court does not correspond to these criteria, which are relevant for choosing independent experts that do not belong to a permanent body. Does this imply the exclusion of the Court of Justice as arbitrator? I submit it does not. First, as mentioned above, the whole directive is optional. Second, article 8 applies to the case where the taxpayer chooses to have a tax treaty dispute solved on the basis of the main dispute resolution mechanism included in the directive. However, the dispute resolution directive provides an additional dispute resolution mechanism: article 10 of the directive allows the competent authorities of the Member States to agree to set up an alternative dispute resolution commission instead of an advisory commission to deliver an opinion on how

[21] See Council Directive (EU) 2017/1852 of 10 October 2017 on tax dispute resolution mechanisms in the European Union.

to solve the question in dispute.[22] Article 10 leaves important leeway to the Member States to decide on the characteristics of such an alternative dispute resolution commission: except for the rules regarding the independence of its members (which should not be problematic given the requirements on the appointment of judges at the Court of Justice), article 10(2) of the directive makes clear that the alternative dispute resolution commission may differ regarding its composition and form from the advisory commission. The second indent of article 10(2) indicates that an alternative dispute resolution commission may apply, where appropriate, "any dispute resolution processes or technique to solve the question in dispute in a binding manner". Accordingly, it does not appear incompatible with article 10 of the dispute resolution directive to choose the Court of Justice as an alternative dispute resolution mechanism. In any case, the directive does not exclude the choice of the Court of Justice on the basis of a tax treaty or through a mutual agreement, given the optional character of the whole directive.

5. Conclusion

To conclude, this short analysis confirms the finding of the Court in the Austria vs Germany case: the Court of Justice of the European Union does have jurisdiction to act as arbitrator in tax treaty disputes between the Member States if it is appointed by the contracting States in a "special agreement", because the main aim of tax treaties – the elimination of double taxation – contributes to the objective of achievement of the internal market. It is submitted that tax treaties concluded on the basis of the 2017 OECD Model Tax Convention, which in addition to the elimination of double taxation also pursue the prevention of tax evasion and avoidance, are equally, if not more, consistent with the objectives of the Treaties, and could also be subject to arbitration by the Court of Justice. Potentially, the same reasoning may be applicable to other fields of the law that are connected to a subject matter of the Treaties. But while the Court indeed may act as arbitrator, should the Member States favour this option? An obvious advantage is the possibility to rule on issues of EU law connected to a case, and thus avoid the problems identified in the Achmea case.[23]

[22] For a proposal on how to implement a standing committee, see Sophia Piotrowski, Roland Ismer, Philip Baker, Jérôme Monsenego, Katerina Perrou, Raffaele Petruzzi, Ekkehart Reimer, Fernando Serrano Antón, Lukasz Stankiewicz, Edoardo Traversa, and Jasna Voje, Towards a Standing Committee Pursuant to Article 10 of the EU Tax Dispute Resolution Directive: A Proposal for Implementation, Intertax, 2019-8/9, pp. 678–692.

[23] However, I have submitted elsewhere that both tax treaty arbitration under article 25(5) of the 2017 OECD Model and the dispute resolution mechanisms included in the dispute

Many other arguments may be considered, and in this limited format it is impossible to analyse them in details. Instead, I would rather discuss this question with Prof. Kleineman and hear his wise comments during one of the much-appreciated tisdagsfika at the Stockholm Centre for Commercial Law. To start the discussion, I would suggest considering three issues: the independence of the judges[24], their competence to deal with tax treaty issues[25], and the publication of arbitration awards[26].

resolution directive are compatible with the Achmea case: see Jérôme Monsenego, Does the Achmea Case Prevent the Resolution of Tax Treaty Disputes through Arbitration?, Intertax, 2019-8/9, pp. 725–736.

[24] The following – by no means exhaustive – can be mentioned with respect to the independence of the judges at the Court of Justice. According to Article 253 TFEU, the judges shall be chosen "from persons whose independence is beyond doubt". During their activity as judges, conflicts of interests are normally avoided: article 4 of the Statute of the Court of Justice of the European Union provides that judges "may not engage in any occupation, whether gainful or not, unless exemption is exceptionally granted by the Council, acting by a simple majority". Moreover, when taking up their duties, judges give a solemn undertaking that after their term of office, they will "respect the obligations arising therefrom, in particular the duty to behave with integrity and discretion as regards the acceptance, after they have ceased to hold office, of certain appointments or benefits" (article 4, third indent, of the Statute of the Court of Justice of the European Union).

[25] When it comes to the competence of the judges, Article 253 TFEU mentions that judges shall be chosen from persons "who possess the qualifications required for appointment to the highest judicial offices in their respective countries or who are jurisconsults of recognised competence". Given the high technicality of tax treaty disputes, and the fact that an important part of them has a factual nature (e.g. issues related to the existence of a permanent establishment, as well as transfer pricing), judges at the Court of Justice may appear as less qualified than tax experts to deal with pure tax treaty issues. At the same time, judges have access to significant resources, are closely working with a group of référendaires, may have recourse to an advocate general, and are already dealing with different types of tax matters – albeit not pure tax treaty issues – when ruling on infringement procedures or preliminary rulings concerning the application of EU law to taxation. They are used to adapting to diverse issues as part of their duties. Certain judges may also have a tax background. Therefore, although the judges of the Court of Justice are obviously less specialised in tax treaty issues than international tax experts, the lack of specialisation of the judges in this area is partly compensated by other factors.

[26] Arbitration awards rendered on the basis of tax treaties outside the scope of the dispute resolution directive are normally not public. The dispute resolution directive is more transparent than the OECD Model Tax Convention, as it provides for the publicity of the final decisions of the competent authorities, following the issuance of the opinion of the advisory commission. However, the competent authorities or the taxpayer may refuse the publication of the final decision, in which case the competent authorities shall publish an abstract of the final decision. On the other hand, the rulings of the Court of Justice are public, and translated to several languages. Although there are certain arguments against the publication of tax treaty arbitration awards, especially with respect to confidential information, publication provides several advantages: it encourages the motivation of decisions, enables interested parties to understand the reasoning of the Court, and builds a body of non-binding precedents that may contribute to converging interpretations of tax treaty issues.