



EUROPEAN COMMISSION

Directorate-General for Trade

The Director General

Brussels,
TRADE/B2/Art.4.1(b)(2018) 4309661

Art.4.1(b)
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Deutsches Aktieninstitut e.V.
Senckenberganlage 28
D-60325 Frankfurt am Main
Deutschland

Subject: Your letters dated 4 July 2018 concerning the «Achmea» judgment of the European Court of Justice – concerns of publicly traded companies and investors - our reference Ares (2018) 3663081

Dear Art.4.1(b),

Thank you very much for your letters of 4 July 2018, in which you express the views and concerns of Deutsches Aktieninstitut on the recent judgment of the Court of Justice of the European Union in *Achmea*¹ and its possible consequences for investors. I have been asked to also reply on behalf of Commissioner Malmström's Cabinet.

You addressed the same letters to other Directorates-General of the European Commission, including DG FISMA, DG COMP, DG GROW and their respective Cabinets. Since DG FISMA is the lead Commission service in charge of the EU investment policy in the internal market, I refer to the reply of DG FISMA (ref. fisma.ddg.b.1(2018)4309136) as regards the aspects of your letters that concern the intra-EU dimension of investment protection.

DG TRADE is the Commission service in charge of the external investment policy of the EU. Therefore, my reply addresses the points of your letter that relate to the extra-EU dimension of investment protection. In particular, in point (b) of your letter, you ask the Commission to clarify that “*extra-EU BITs are not addressed by the judgment*” in *Achmea*.

The Commission's view is that in *Achmea* the Court has made no findings with regard to investor-to-State dispute settlement (ISDS) or the Investment Court System (ICS) mechanisms contained in investment agreements concluded by the Union and/or by EU Member States with non-EU countries and different legal considerations apply to such agreements. This also applies to the extra-EU dimension of the Energy Charter Treaty (ECT).

¹ Judgment of the Court (Grand Chamber) of 6 March 2018, Case C-284/16, *Slowakische Republik v Achmea BV*, EU:C:2018:158.

In *Achmea*, the Court also confirmed its well-established case-law according to which the competence of the EU in the field of international relations and its capacity to conclude international agreements necessarily entail the power to submit to the decisions of a court which is created or designated by such agreements as regards the interpretation and application of their provisions, provided that the autonomy of the EU and its legal order is respected.

As you may know, the Court of Justice is currently considering legal issues relating to the EU external investment policy in relation to an opinion requested by Belgium pursuant to Article 218(11) TFEU concerning the Investment Court System under the recent EU-Canada trade agreement.² The hearing in this case took place on 26 June. The opinion of the Court is expected in the coming months.

Yours sincerely,



Jean-Luc DEMARTY

Cc:

Art.4.1(b) (Cabinet MALMSTRÖM)

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² Opinion 1/17.