

VALDIS DOMBROVSKIS

*Vice-President of the European Commission*

30 NOV. 2018

Brussels,  
Ares (2018)

Dear Minister,

I would like to draw your attention to the consequences of the judgment of the Court of Justice of the European Union in the Achmea case (C-284/16). On 6 March 2018, the Court ruled that the investor-to-State arbitration clause in bilateral investment treaties between Member States ("intra-EU BITs") is incompatible with EU law. Such arbitration calls into question the autonomy, primacy and full effectiveness of EU law, and the principle of mutual trust.

I am happy that Member States which still have intra-EU BITs appear to be willing to terminate those intra-EU BITs, following the Achmea judgment. The Commission had requested this termination in infringement and EU Pilot proceedings. There seems to be a consensus that the intra-EU BITs should be terminated in a coordinated manner. There is also agreement that, as a first step, Member States should adopt a declaration on the legal consequences of the Achmea judgment, and subsequently conclude a plurilateral termination treaty.

The declaration will inform the general public of the Member States' views and intentions well in advance of the formal termination, which will require some time due to the fulfilment of the necessary procedures. It is important to quickly provide legal clarity for investors and arbitral tribunals established on the basis of intra-EU BITs. The declaration aims to prevent new arbitral awards and new arbitrations which would be incompatible with EU law. At the same time, it will give the necessary assurance that all Member States will implement the Achmea judgment, thereby allowing the Commission to refrain from taking further steps in the ongoing infringement procedures or from launching new infringement procedures.

The Commission agreed to assist Member States in terminating the intra-EU BITs. A number of meetings between our experts have already taken place and I would like to thank you for your support so far.

Mr Vilius SAPOKA  
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You will find attached to this letter the final declaration on the legal consequences of the Achmea judgment, prepared by the experts after intensive discussions. This text reflects a broad, although not unanimous, consensus amongst Member States as it has emerged from expert meetings. In the Commission's view, it properly reflects all necessary actions to be taken to ensure full compatibility with EU law. It can achieve a very important objective: clarity for investors and arbitral tribunals. For this reason I trust that, in the spirit of good cooperation and compromise, Member States will be in a position to sign up to the commitments reflected in the attached text. The Commission will consider pursuing infringement proceedings on intra EU-BITs against any Member States who are not willing to take such public commitments.

The Commission is ready to organise signature by the Permanent Representatives to the European Union in the Commission premises. A room will be available in the Berlaymont building on 15 January 2019 in the afternoon. Further practical arrangements will be communicated separately. I kindly invite your government to nominate and empower a representative for the adoption of the declaration.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'V. D.', followed by a long, sweeping horizontal stroke.

Valdis DOMBROVSKIS

Encl.: Declaration of the Representatives of the Governments of the Member States, of [date] on the legal consequences of the judgment of the Court of Justice in Achmea and on investment protection in the European Union



EUROPEAN COMMISSION

Cabinet of Vice-President Valdis Dombrovskis  
Head of Cabinet

Brussels,  
Ares (2018)

30 NOV. 2018

Your Excellency,

Please find enclosed a letter from Vice-President Valdis DOMBROVSKIS addressed to Mr Vilius SAPOKA, Minister of Finance.

I would be very much obliged if you could transmit this correspondence to him.

Yours sincerely,

Kai Wynands

Her Excellency Ms Jovita NELIUPŠIENĖ  
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