

 <p>Council of the European Union General Secretariat</p>	
Trade Policy Committee (Services and Investment)	
m.d. :	31/16
source :	SK Delegation
for :	Information
date :	10 - 05 - 2016

Achmea v. the Slovak Republic – the latest development

The Slovak Republic received on 9 May 2016 the judgment of the German Federal Court of Justice (Bundesgerichtshof, the “BGH”) dated 3 March 2016 in case Achmea v. the Slovak Republic. The BGH decided to request a preliminary ruling from the Court of Justice of the European Union (the “CJ EU”) in accordance with Article 267 TFEU, as requested by the Slovak Republic.

The BGH will in near future request a preliminary ruling from the CJEU whether the bilateral investment treaty concluded between the Slovak Republic and the Netherlands Kingdom, based on which the international investment arbitration was commenced, is in compliance with the EU law. This judgment moves the dispute to the new stage and creates a precedent which may affect the status of other bilateral investment treaties concluded between the Member States (the “intra EU BITs”) and international investment arbitrations commenced via the intra EU BITs.

The conflict of intra EU BITs with the EU law has been declared also by the European Commission, which has commenced the infringement proceedings against five Member States in this relation.

Achmea B.V. commenced the dispute in 2008 by filing claim against the Slovak Republic for ban of profit of health insurance companies, which was allegedly incompliant with the respective intra EU BIT. The arbitration tribunal issued the award in 2012, deciding on the breach of this intra EU BIT by the Slovak Republic. The Slovak Republic filed a motion for set aside of this award with the Higher Regional Court (Oberlandesgericht, “OLG”) Frankfurt am Main. The motion was dismissed, therefore the Slovak Republic filed an appeal against the dismissal before the BGH. The main argument of the Slovak Republic has been the inapplicability of the particular bilateral investment treaty with the EU law after entry of the Slovak Republic into EU.
