

Dutch company allowed to continue investment arbitration claim despite ECJ's Achmea decision (Amsterdam District Court)

by *Practical Law Arbitration*, with *OSK Advocaten*

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In *Poland v LC Corp* (ECLI:NL:RBAMS:2023:1306), the Amsterdam District Court refused to order LC Corp to withdraw an arbitration against Poland, despite the European Court of Justice ruling in *Slowakische Republik v Achmea BV* (Case C-284/16) (*Achmea*).

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The Amsterdam District Court has refused to order a Dutch investor (LC Corp) to withdraw an English-seated investment arbitration against Poland despite the termination of the Netherlands-Poland bilateral investment treaty (BIT) following the European Court of Justice (ECJ) ruling in *Slowakische Republik v Achmea BV* (Case C-284/16) (*Achmea*). This judgment followed an earlier ruling in interim relief proceedings, also favourable to LC Corp (see [Legal update, Company not required to withdraw investment arbitration claim despite ECJ's Achmea decision \(Amsterdam District Court\)](#)).

First, the court ruled that it had jurisdiction because Poland's claim concerned whether pursuit of the arbitration constituted an abuse of rights for violation of EU law and did not concern the dispute submitted to arbitration. The court also ruled that there is no basis for the Dutch courts to rule on the jurisdiction of the tribunal.

The court considered that the arbitration was contrary to EU law and that a Dutch court would be required not to give effect to an award resulting from the arbitration. However, the court ruled that this does not mean that LC Corp's pursuit of the arbitration outside of the EU is an abuse of rights. That would only be the case if the arbitration claim lacked any chance of success by reason of violation of EU law. The court ruled that this was not the case because the arbitration clause and the sunset clause in the BIT may conflict with termination of the BIT and the ECJ case law. Moreover, LC Corp had pointed to examples in similar cases where tribunals did accept jurisdiction. The court ruled that its obligation to ensure the full effect of EU law did not extend to prohibiting an arbitration before a tribunal outside the EU, even if the award cannot have any effect within the EU.

Lastly, the court ruled that Poland lacked an interest in obtaining a declaration from the court, that there was no valid arbitration agreement. Neither the arbitral tribunal nor the English courts are bound by a decision of the court about whether there is a valid arbitration agreement.

Although LC Corp was allowed to continue the arbitration and can therefore consider the judgment a win, the court seemed to confirm that an award obtained in the arbitration cannot be enforced in the EU, or at least not in the Netherlands.

Case: [Poland v LC Corp](#) (ECLI:NL:RBAMS:2023:1306) (8 March 2023).

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