

Amsterdam Court of Appeal allows Dutch investor to continue intra-EU arbitration against Poland

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

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In *Poland v LC Corp (ECLI:NL:GHAMS:2023:2409)*, the Amsterdam Court of Appeal confirmed an earlier judgment allowing a Dutch investor to continue an intra-EU investment treaty arbitration against Poland.

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In a recently published judgment, the Amsterdam Court of Appeal confirmed an earlier urgent relief judgment allowing the Dutch defendant (LC Corp) to continue an intra-EU investment treaty arbitration against Poland despite the ECJ ruling in *Slowakische Republik v Achmea BV (Case C-284/16) EU:C:2018:158* (Achmea) (see [Legal update, Company not required to withdraw investment arbitration claim despite ECJ's Achmea decision \(Amsterdam District Court\)](#)).

The court first held that, in principle, in urgent relief proceedings, the court had to follow the earlier judgment in the main proceedings, which also refused to order LC Corp to withdraw the arbitration (see [Legal update, Dutch company allowed to continue investment arbitration claim despite ECJ's Achmea decision \(Amsterdam District Court\)](#)). That court ruled that Poland's claim in urgent relief proceedings did not have a protective nature, such as to safeguard recourse against assets, which could have justified an interim ruling pending the appeal of the main proceedings.

Further, the court held that the judgment in the main proceedings did not include an evident error by ruling, on the one hand, that the Dutch courts had to withhold giving effect to any award in view of its obligations under EU law and, on the other hand, that the tribunal itself had to rule on its jurisdiction. The court considered that the arbitration clause in the bilateral investment treaty on which LC Corp based its claim was clearly in violation of EU law, yet that in itself did not prohibit LC Corp from pursuing the arbitration outside of the EU. Therefore, LC Corp could not be ordered to file a joint request for termination or suspension of the arbitration.

Lastly, the court observed that it would likely take at least a year before an award on jurisdiction would be rendered and, if the tribunal accepted jurisdiction, an even longer period before an award on the merits. As such, Poland lacked an urgent interest in obtaining an order in urgent relief proceedings before the state court. This position was not affected by the fact that Poland had to incur costs in relation to the arbitration and that the European Commission expected Poland to take any measures necessary to comply with EU law, including conducting these proceedings before the Dutch courts.

Poland's only option before the Dutch courts to try to stop the arbitration now appears to be an appeal against the judgment in the main proceedings.

Case: [Poland v LC Corp \(ECLI:NL:GHAMS:2023:2409\)](#) (29 August 2023).

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