

---

# The Effects of the *Achmea* Judgment on Intra-EU BIT Claims, Law Firms, and Third-Party Funders

11 January 2019, Geneva

Submitted by

Anil Yilmaz, Anna Tujakowska, Ioana-Virginia Motoc

To: Ministry of Finance of the Slovak Republic  
Stefanovicova 5  
P. O. BOX 82  
817 82 Bratislava, The Slovak Republic

*All projects prepared and published by TradeLab law clinics and practica are done on a pro bono basis by students for research purposes only. The projects are pedagogical exercises to train students in the practice of international economic and investment law, and they do not reflect the opinions of TradeLab and/or the academic institutions affiliated to TradeLab. The projects do not in any way constitute legal advice and do not, in any manner, create an attorney-client relationship. The project cannot, in any way, and at any time, bind, or lead to any form of liability or responsibility for the clinic participants, participating academic institutions, or TradeLab.*

*Statement by the Slovak Republic:*

*This project has been prepared by students participating in TradeLab for the Slovak Republic being the beneficiary, represented by the Ministry of Finance of the Slovak Republic. The opinions expressed in the project are the opinions of students who prepared the project. These opinions are not the opinions of the representatives of the Slovak Republic and cannot be attributed to them. The aim of project is to enhance the international academic cooperation between the Ministry of Finance of the Slovak Republic and the Centre for Trade and Economic Integration, Graduate Institute of International and Development Studies. The project cannot, in any way, and at any time, bind, or lead to any form of liability or responsibility for the Slovak Republic.*

---

### TradeLab

International rules on cross-border trade and investment are increasingly complex. There is the WTO, World Bank and UNCTAD, but also hundreds of bilateral investment treaties (BITs) and free trade arrangements ranging from GSP, EU EPAs and COMESA to ASEAN, CAFTA and TPP. Each has its own negotiation, implementation and dispute settlement system. Everyone is affected but few have the time and resources to fully engage. TradeLab aims to empower countries and smaller stakeholders to reap the full development benefits of global trade and investment rules. Through pro bono legal clinics and practica, TradeLab connects students and experienced legal professionals to public officials especially in developing countries, small and medium-sized enterprises and civil society to build lasting legal capacity. Through 'learning by doing' we want to train and promote the next generation of trade and investment lawyers. By providing information and support on negotiations, compliance and litigation, we strive to make WTO, preferential trade and bilateral investment treaties work for everyone. More at: <https://www.tradelab.org>.

### What are Legal Practica

Legal practica are composed of small groups of highly qualified and carefully selected students. Faculty and other professionals with longstanding experience in the field act as Academic Supervisors and Mentors for the Practica and closely supervise the work. Practica are win-win for all involved: beneficiaries get expert work done for free and build capacity; students learn by doing, obtain academic credits and expand their network; faculty and expert mentors share their knowledge on cutting-edge issues and are able to attract or hire top students with proven skills. Practicum projects are selected on the basis of need, available resources and practical relevance. Two to four students are assigned to each project. Students are teamed up with expert mentors from law firms or other organizations and carefully prepped and supervised by Academic Supervisors and Teaching Assistants. Students benefit from skills and expert sessions, do detailed legal research and work on several drafts shared with supervisors, mentors and the beneficiary for comments and feedback. The Practicum culminates in a polished legal memorandum, brief, draft law or treaty text or other output tailored to the project's needs. Practica deliver in three to four months. Work and output can be public or fully confidential, for example, when preparing legislative or treaty proposals or briefs in actual disputes.

### Centre for Trade and Economic Integration (CTEI)

The Centre for Trade and Economic Integration (CTEI) CTEI is the Graduate Institute's Centre of Excellence for research on international trade. The Centre brings together the research activities of eminent professors of economics, law and political science in the area of trade, economic integration and globalization. The Centre provides a forum for discussion and dialogue between the global research community, including the Institute's student body and research centres in the developing world, and the international business community, as well as international organisations and NGOs. The Centre runs research projects and organises events. A core goal of the Centre is to foster genuine, interdisciplinary research and to work across discipline to foster solutions that address the major societal issues of today. The Centre for Trade and Economic Integration fosters world-class multidisciplinary scholarship aimed at developing solutions to problems facing the international trade system and economic integration more generally. It works in association with public sector and private sector actors, giving special prominence to Geneva-based International Organisations such as the WTO and UNCTAD. The Centre also bridges gaps between the scholarly and policymaking communities through outreach and training activities in Geneva. More at: [www.graduateinstitute.ch/ctei](http://www.graduateinstitute.ch/ctei).

# TABLE OF CONTENTS

Table of Abbreviations .....	4
Executive Summary .....	5
Introduction .....	7
1. Factual and Statistical Analysis of Cases Under Intra-EU BITs in Relation to the Achmea Judgment .....	8
1.1. Status of pending cases under intra-EU BITs affected by the Achmea judgment .....	9
1.2. New cases initiated under intra-EU BITs subsequent to the Achmea judgment .....	16
2. Position of Third-party Funders and Legal Advisors vis-à-vis the Achmea Judgment .....	18
2.1. Analysis of the changes in the position of third-party funders towards funding intra-EU BIT disputes .....	18
2.2. Analysis of the changes in the position of legal advisors towards new cases brought under intra-EU BITs .....	20
Annex I – The Project .....	23
Annex II – The List of Cases .....	24
Annex III – Surveys conducted with Third-Party Funders and Law Firms .....	51

## Table of Abbreviations

BIT	Bilateral Investment Treaty
CJEU	Court of the Justice of the European Union
EC	European Commission
ECT	The Energy Charter Treaty
EU	European Union
ICSID Convention	Multilateral Convention on the Settlement of Investment Disputes Between States and Nationals of Other States 1965
ISDS	Investor-State Dispute Settlement
SCC	The Arbitration Institute of the Stockholm Chamber of Commerce
TFEU	Treaty on the Functioning of the European Union – Consolidated version of the Treaty on the Functioning of the European Union 2007
UNCITRAL	United Nation Commission on International Trade Law

## **Executive Summary**

This executive summary presents the key findings of the research on the effects of the *Achmea* judgment of the Court of Justice of the European Union on intra-EU investment arbitration. The findings speak to (i) the *Achmea* judgment's effects on pending and recently concluded intra-EU cases and (ii) its reception by law firms and third-party funders.

### ***Facts and Statistics***

Section 1.1 of the Report lays down the statistical analysis of cases that are being affected by the *Achmea* judgment. As of 31 December 2018, the *Achmea* judgment appears to have directly or indirectly affected some 90 pending intra-EU cases as well as 17 concluded intra-EU cases. Accordingly, the judgment touches upon a quarter of the total number of pending public investor-state disputes with claims amounting an estimated total of EUR 35.1 billion. Among pending cases, the strong majority are before ICSID tribunals with the ECT arising as the most frequently invoked legal instrument. The claimants in these cases are predominantly from Western Europe, while respondents are typically Southern and Eastern European States. This shows the main stakeholders and varying interests in the judgment.

Section 1.1 of the Report factually summarises the 14 cases which contain significant developments regarding the *Achmea* judgment. These cases show that while the judgment is generally perceived to put an end to the intra-EU ISDS practice, the arbitral community takes steps to reduce its impact over the practice. A number of arbitral tribunals distinguish the *Achmea* judgment from ECT and/or ICSID claims. At the same time, the European Commission and the Member States actively present a strong case for the *Achmea* across the board. So far, such efforts are appreciated by the courts of the Member States of the European Union, in Sweden and Germany, resulting in setting aside or staying enforcement of the awards. However, the reception of enforcement attempts in the United States is still pending.

Section 1.2 of the Report provides information on the 5 new cases that have been initiated after the *Achmea* judgment. These cases show that despite the verdict in the *Achmea* judgment, new cases are still underway. However, in terms of their frequency, the number of cases has dropped by more than a half as compared to the same period before the *Achmea* judgment.

### ***Market Reaction***

Section 2 of the Report focuses on the reaction of the top law firms and third-party funders to the *Achmea* judgment. The surveys, an interview, and field observations undertaken as part of this research show that the reception of the *Achmea* in the market has been somewhat mixed. The practitioners fully recognize the material importance of the judgment. However, they are also reluctant to perceive the judgment as an impediment against intra-EU investment arbitration under all circumstances. The law firms and third-party funders who contributed to this Report indicate that they would consider moving on with intra-EU claims when the underlying claims are based on the ECT and/or ICSID framework. The field observations made throughout three conferences also suggests the same. That said, the *Achmea* judgment clearly arises as a factor that will be considered before initiating intra-EU claims.

The *Achmea* judgment also bears upon potential company migration. A number of law firms that took part in the surveys indicated that they have advised their clients to restructure and benefit from extra-EU BITs. Others remarked that they may consider doing the same. At least one law firm publicly announced their approach with similar intentions through a public client memorandum. The Chairman of a Luxembourg-based energy company publicly declared their intention to move their headquarters during a recent conference if the *Achmea* judgment is not reversed. Therefore, subject to legal limitations, the multi-billion-dollar business interests affected by the *Achmea* judgment may result in the restructuring of investments.

## Introduction

1. The *Achmea* judgment of the CJEU dated March 6, 2018 (Slovak Republic v. Achmea B.V., Case no. C-284/16) represents a highly anticipated decision by the EU's highest court regarding the compatibility of dispute settlement provisions contained in intra-EU BITs with EU law. In this landmark decision, the CJEU determined that the arbitration clause contained in Article 8 of the Netherlands and Slovakia BIT is incompatible with EU law.<sup>1</sup>
2. This Report provides an overview of the effects of the *Achmea* judgment as of 31 December 2018. It pertains to the Project assigned to the TradeLab members by the Ministry of Finance of the Slovak Republic as of September 19, 2018 (Annex-I: The Project).
3. The Project strives to provide answers to the following research questions:
  - a. *Which new cases have been initiated under intra-EU BITs after the Achmea judgment?*
  - b. *What is the status of pending cases under intra-EU BITs after the Achmea judgment?*
  - c. *Whether third-party funders still fund intra-EU cases after the Achmea judgment?*
  - d. *Whether investors are being advised to move their seats after the Achmea judgment?*
4. The findings related to the above questions are structured as follows. Section 1 provides a factual and statistical analysis of new and pending cases arising from intra-EU BITs. Section 2 presents a market analysis based on the results of surveys conducted with legal advisers and third-party funders in relation to the *Achmea* judgment. Finally, any supplementary information is presented as Annexes I-III to this Report.

---

<sup>1</sup> We are extremely grateful to Fuad Zarbiyev, Joost Pauwelyn, Konstantinos Salonidis, Panagiotis Kyriakou and all participants to the surveys for their valuable comments and insights on the preparation of this report.

# 1. Factual and Statistical Analysis of Cases Under Intra-EU BITs in Relation to the *Achmea* Judgment

5. This section (i) factually and statistically investigates the status of pending proceedings under intra-EU BITs and (ii) provides a list of new cases initiated under intra-EU BITs after the *Achmea* judgment.
6. For purposes of this section, the term “**intra-EU BITs**” is interpreted broadly so as to cover any investment treaty concluded between the 28 Member States to the European Union, including multilateral treaties *i.e.* the ECT.<sup>2</sup>
7. The term “**pending cases**” is considered to refer to cases originating from intra-EU BITs or the ECT that are still pending or at the annulment, or rectification or revision phase, pursuant to ICSID Proceedings as of 31 December 2018.
8. The term “**concluded cases**” is construed to encompass cases originating from intra-EU BITs, or the ECT that are either recently concluded (*i.e.* with a final ICSID or non-ICSID award issued) or in the set aside or enforcement phase or both. While the set aside phase pertains to non-ICSID awards only, the enforcement stage encompasses both, the ICSID and non-ICSID awards. The latter review is limited to concluded cases with publicly known developments after 6 December 2016 until 31 December 2018.
9. Overall, **107** cases are found relevant to the above inquiry. **90** of these cases are pending and **17** are concluded. Among pending cases, **84** are in the jurisdictional and/or merits phase, **4** are in the annulment phase, **1** is in the rectification and **1** is in the revision phase. Among concluded cases, **4** cases are at the enforcement phase with **1** being attempted to set aside, **1** is set aside, **1** is confidential, **1** is settled. **10** cases have no public information available as to their status and have thus been included in the “concluded” category.
10. Of all these cases, **5** have been initiated under intra-EU BITs after the *Achmea* judgment and at least **1** has been discontinued due to the same hence excluded from the above statistics.
11. The total value of the claims that is known in **51** of **90** pending cases amounts to approximately **EUR 19.9 billion**. In **39** of **90** pending cases, relevant figures are not disclosed. Accordingly, the estimated value claimed in pending cases amounts to approximately **EUR 35.1 billion** when a linear proportion is assumed.<sup>3</sup>

---

<sup>2</sup> As of the date of this report, the United Kingdom remains a full member of the EU and rights and obligations continue to fully apply in and to the UK.

<sup>3</sup> Note that some figures were converted from US dollars to EUR at the currency rate of 31 December 2018.



12. Responses of tribunals to challenges to their jurisdiction arising from the *Achmea* judgment in these cases vary, with arguments based on the principle of estoppel, *res judicata*, and conflict of norms prevailing.
13. Subsequent to the *Achmea* judgment, a number of arbitrators and *ad hoc* committee members resigned from their posts due to their earlier expressed opinions, or conflicts of interest.
14. EU Member State courts so far gave effect to the *Achmea* judgment to varying degrees through staying enforcement or setting aside of the awards. US Courts are yet to decide on enforcement objections arising from the *Achmea* judgment.
15. The following sub-sections present a statistical and factual analysis of the above-mentioned cases including details, case charts, and the list of cases. The list of cases stems from a reading of several publicly available and paid databases.<sup>4</sup> It is not exhaustive and excludes awards and proceedings that are confidential.<sup>5</sup>

### **1.1. Status of pending cases under intra-EU BITs affected by the *Achmea* judgment**

16. For reasons of brevity, the full list of pending and concluded cases affected is enclosed as Annex II to this Report [Annex II: List of Cases]. Under Annex II, the cases under ICSID Rules, ICSID Additional Facility Rules, UNCITRAL, ICC and SCC Rules, the pending and concluded cases and the cases with major developments are categorized separately.
17. The figure below shows the overall weight of pending intra-EU cases among current pending cases. **90** pending intra-EU cases represent **29%** of the overall pending investor-state caseload showing the impact of the *Achmea* judgment (Chart 1).

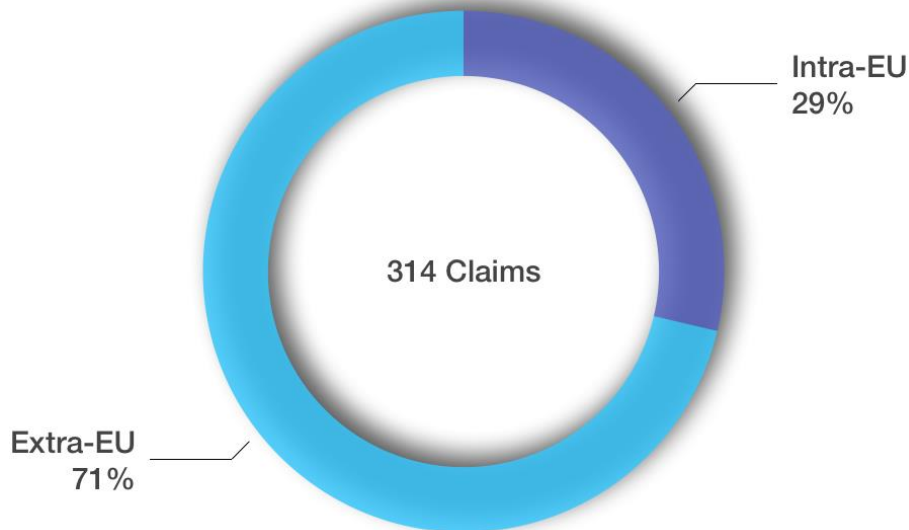
---

<sup>4</sup> The following web sites and databases are reviewed for this exercise: ICSID Website (<https://icsid.worldbank.org>), PCA Website (<https://pca-cpa.org/en/home/>), italaw (<https://www.italaw.com>), Oxford Investment Claims (<http://oxia.ouplaw.com>); UNCTAD Website (<https://investmentpolicyhub.unctad.org/ISDS>), ECT website (<https://energycharter.org/process/energy-charter-treaty-1994/energy-charter-treaty/>), and Investor-State Law Guide (<https://www.investorstatelawguide.com>) to identify recent and pending proceedings arising from and intra-EU BITs. Specified news networks are also reviewed such as Global Arbitration Review (<https://globalarbitrationreview.com>) and Investment Arbitration Reporter (<https://www.iareporter.com>) on target case law. This exercise provided the information otherwise not available for a number of proceedings. The overall data has been read, analysed and categorized cumulatively, as presented herein.

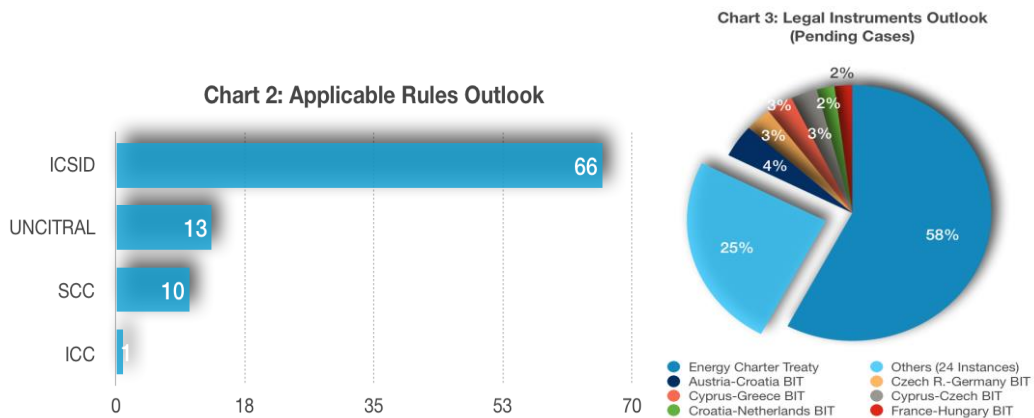
<sup>5</sup> Despite ongoing efforts, transparency still remains an issue in investment jurisprudence. Proceedings may not be disclosed without the express consent of the parties. This deems our findings at best inconclusive regarding the overall investor-state dispute resolution practice and confines them to publicly available information.

Chart 1: Pending Investment Claims (Public)

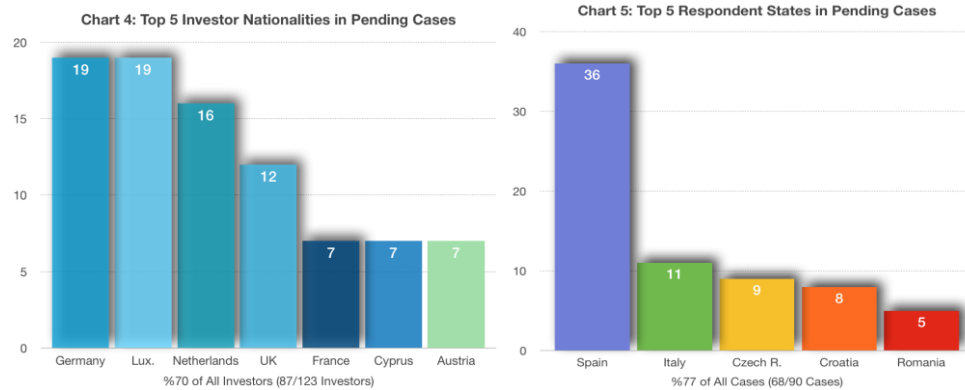
CATEGORY	CLAIMS
Intra-EU	90
Extra-EU	224



18. Among **90** pending cases found relevant to this inquiry, **66** are subject to ICSID Rules, while **24** are subject to UNCITRAL, SCC and ICC Rules. ICSID cases represent the strong majority with **73%** of all **90 pending** cases (Chart 2). The ECT is the most frequently invoked legal instrument in these cases, specifically for **56** times, followed by the Austria-Croatia BIT, Cyprus-Greece BIT, France-Hungary BIT, Belgium/Luxembourg-Poland BIT then others. ECT claims are invoked in **57%** of cases found relevant to the inquiry (Chart 3).



19. Top investor nationalities in claims arising from intra-EU BITs are of Germany followed by Luxembourg, Netherlands, UK, and France, representing the nationalities of **70%** of the total number of investors (Chart 4). Top respondent nations are Spain followed by Italy, Croatia, Romania and the Czech Republic taking part in **77%** of all relevant cases with Spain taking a strong lead (Chart 5).



20. Overall, these findings are consistent with the statistics published by UNCTAD on intra-EU investor-state arbitration cases. According to UNCTAD, as of 31 July 2018, intra-EU cases represent **20%** of the global case law.<sup>6</sup> We note that this figure slightly increases to **29%** and the ECT and ICSID Rules are more frequently utilized in pending cases (**58%** as opposed to a global 45%, **73%** as opposed to a global 54% respectively). Other than those, no significant differences are observed in terms of the claimant nationalities and respondent states in pending cases compared to overall case law.
21. Major developments in relation to **14** pending and concluded cases arising from intra-EU BITs are highlighted below in reverse chronological order with a brief description of the treaty in question, status and facts and claims relevant to the *Achmea* judgment with relevant notes if any.

- *AS Norvik Banka and others v. The Republic of Latvia* (Date Registered: 28 December 2017 / ICSID Case No. ARB/17/47)
  - Treaty: Latvia – UK BIT 1994]
  - Status/Facts: Claims arising out of the sanctions imposed by the Government on the claimants' bank for its alleged failure to comply with anti-money laundering and terror financing regulations. **Pending**. The tribunal issued the Procedural Order No. 3.
  - Relevant Rulings/Claims: On 30 October 2018 the Tribunal issued the Procedural Order No.3, granting leave to the EC to file *amicus curiae* submission addressing the legal issue of whether

<sup>6</sup> UNCTAD, Fact Sheet on Intra-European Union Investor-State Arbitration Cases, IIA Issues Note, Issue 3 (2018).

the investor-state arbitration mechanism in the Latvia/UK BIT remains available.

- *Gabriel Resources Ltd. and Gabriel Resources (Jersey) v. Romania* (Date Registered: 30 July 2015 / ICSID Case No. ARB/15/31)
  - Treaty: Canada – Romania BIT 2011; UK – Romania BIT 1996
  - Status/Facts: Dispute arose from the failure of the Romanian authorities to issue an environmental permit required by the claimant to start exploitation of an undeveloped gold project. **Jurisdiction and Merits Phase.** Parties are exchanging briefs.
  - Relevant Rulings/Claims: Romania recently filed an additional objection to jurisdiction based on the *Achmea* judgment.
  
- *Novenergia II - Energy & Environment (SCA) v. Spain* (Date Registered: 2015 / SCC Case No. 2015/063)
  - Treaty: Energy Charter Treaty
  - Status/Facts: Spain's amendment to the incentive regime in its renewable energy sector gave rise to the dispute. Award issued in favor of the claimant. **Enforcement phase.** Enforcement stayed by the Swedish Court.
  - Relevant Rulings/Claims: Spain attempts to have the award set aside and already successfully obtained a stay of enforcement for the previously issued SCC Award from the Swedish court. Spain further requests the Swedish court to refer the dispute to CJEU for a decision specific to ECT cases.
  - Note: *Claimant engages to enforce the award in the US.*
  
- *Masdar Solar & Wind Cooperatief U.A. v. The Kingdom of Spain* (Date Registered: 11 February 2014 / ICSID Case No. ARB/14/1)
  - Treaty: Energy Charter Treaty
  - Status/Facts: Spain's amendment to the incentive regime in its renewable energy sector gave rise to the dispute. Award issued in favor of the claimant. **Enforcement phase.** The claimant filed observations on Spain's request for a supplementary decision on 12 September 2018.
  - Relevant Rulings/Claims: The tribunal rejected Spain's EU law objection to jurisdiction, isolating the *Achmea* judgment to the Netherlands – Slovakia BIT and to bilateral investment treaties; in doing so, it acknowledged the EU's membership to the ECT.
  - Note: *Claimant engages to enforce the award in the US.*
  
- *Antin Infrastructure Services Luxembourg S.à.r.l. and Antin Energia Termosolar B.V. v. The Kingdom of Spain* (Date Registered: 22 November 2013 / ICSID Case No. ARB/13/31)
  - Treaty: Energy Charter Treaty
  - Status/Facts: Spain's amendment to the incentive regime in its renewable energy sector gave rise to the dispute. Award issued in favor of the claimant. **Enforcement phase.** Proceedings

temporarily suspended following the passing away of arbitrator Francisco Orrego Vicuña.

- Relevant Rulings/Claims: Spain submitted an application to reopen the case, the proceedings of which previously concluded. The tribunal rejected this request without elaboration. Prior to the *Achmea* judgment, the EC's attempt to file a non-disputing party submission were subjected to associated costs and limited to 15 pages hence withdrawn by EC.
- *Edenred S.A. v. Hungary* (Date Registered: 9 September 2013 / ICSID Case No. ARB/13/21)
- Treaty: France – Hungary BIT 1986
  - Status/Facts: Dispute rises from the enactment of legislation granting Hungary monopoly over the prepaid corporate vouchers industry. **Annulment phase**. The *ad hoc* Committee is reconstituted on 1 October 2018.
  - Relevant Rulings/Claims: Hungary submitted a request for the revision of the award and stay of enforcement based on the *Achmea* judgment.
  - Note: *Gaetan Verhoosel resigned from the ad hoc Committee implicating the Achmea judgment.*
- *UP [Le Chèque Déjeuner] and C.D Holding Internationale v. Hungary* (Date Registered: 23 December 2013 / ICSID Case No. ARB/13/35)
- Treaty: France – Hungary BIT 1986
  - Status/Facts: Dispute arose from the enactment of legislation granting Hungary monopoly over the prepaid corporate vouchers industry. **Enforcement phase**. The tribunal issued its award.
  - Relevant Rulings/Claims: The tribunal denied EC's request to make a submission as a non-disputing party citing final stages of proceedings. With respect to the *Achmea* judgment and its effects, the tribunal emphasized the self-executing character of the ICSID Convention and held that the *Achmea* judgment cannot apply to ICSID cases. The tribunal held acceding to the EU, in and out of itself, does not trigger denunciation of the ICSID Convention.
  - Note: *EC's request for a non-disputing party submission is denied for the first time.*
- *Georg Gavrilovic and Gavrilovic d.o.o. v. Republic of Croatia* (Date Registered: 31 May 2012 / ICSID Case No. ARB/12/39) [Concluded]
- Treaty: Croatia – Austria BIT 1997
  - Status/Facts: Dispute arose from disagreements over claimants' title to agricultural and grazing land for its meat processing business. **Enforcement phase**. The tribunal issued its award.
  - Relevant Rulings/Claims: The tribunal considered timeliness of Croatia's intra-EU objection based on the *Achmea* judgment in late proceedings and found it untimely and inadmissible due to

absence of an earlier reservation. Further, the tribunal did not consider the *Achmea* judgment as new evidence.

- *Vattenfall AB and others v. Germany* (Date Registered: 31 May 2012 / ICSID Case No. ARB/12/12)
  - Treaty: Energy Charter Treaty
  - Status/Facts: Germany's decision to shut down nuclear power plants gave rise to the dispute. **Jurisdictional phase**. The Tribunal issued a decision on one of the Respondent's jurisdictional objections on 31 August 2018.
  - Relevant Rulings/Claims: The tribunal rejected Germany's EU law objection to jurisdiction and ruled that the *Achmea*-reasoning does not apply to arbitrations governed by the ECT. In doing so, the Tribunal distinguished the ECT from BITs and asserted that EU law cannot be superior to international law and EU treaties themselves are international law subject to interpretation through VCLT. The tribunal further highlighted that in the event of a conflict, the ECT's conflict rule calls for non-derogation. On the other hand, the tribunal acknowledged the *Achmea* judgment as new evidence and denied the timeliness objection.
  
- *United Utilities (Tallinn) B.V. and Aktsiaselts Tallinna Vesi v. Estonia*, (Date of registration: 23 December 2013; ICSID Case No. ARB/14/24)
  - Treaty: Netherlands – Estonia BIT 1992
  - Status/Facts: Alleged refusal by Estonian regulators to permit water tariff increases in Tallinn gave rise to the dispute. **Jurisdiction and Merits Phase**. The tribunal ruled on the EC's application to participate as a non-disputing party.
  - Relevant Rulings/Claims: The tribunal recognized the EC's "significant interest" and granted the EC the right to intervene limited to a single written amicus curiae submission of no more than 10 pages to be filed within one week of its decision.
  
- *Marfin Investment Group Holdings S.A., Alexandros Bakatselos and others v. Cyprus* (Date of registration: 27 September 2013; ICSID Case No. ARB/13/27)
  - Treaty: Cyprus – Greece BIT 1992
  - Status/Facts: Issuance of a decree that increased government participation and control in a Cypriot bank and the claimant's subsequent insolvency gave rise to the dispute. **Concluded**. The tribunal issued its award.  
Relevant Rulings/Claims: The tribunal issued the award in favor of Cyprus, dismissing all claims. In doing so, the tribunal found that the *Achmea* judgment is not applicable to the case before it.
  
- *Dan Cake (Portugal) S.A. v. Hungary* (Date Registered: 19 April 2012 / ICSID Case No. ARB/12/9)
  - Treaty: Hungary – Portugal BIT 1992

- Status/Facts: Mismanagement of government authorities of an insolvency process gave rise to the dispute. **Annulment phase.** Claimant filed a reply to Hungary's application for a stay of enforcement of the award on 26 September 2018.
  - Relevant Rulings/Claims: Hungary submitted a request for revision of the award and stay of enforcement, arguing that the *Achmea* judgment provides a ground for such a request.
  - Note: *Arbitrator Jan Paulsson resigned from the tribunal implicating the Achmea judgment.*
- *Achmea B.V. (formerly Eureka B.V.) v. The Slovak Republic* (PCA Case No. 2008-13) [Concluded]
- Treaty: Netherlands – Slovakia BIT 1991
  - Status/Facts: Measures adopted affecting the health insurance market gave rise to the dispute. **Concluded.** Slovakia won the appeal before the German Supreme Court.
  - Relevant Rulings/Claims: German Supreme Court ruled to set aside the award citing the *Achmea* judgment.
- *Micula v. Romania (I) Ioan Micula, Viorel Micula and others v. Romania (I)* (Date Registered: 13 October 2005; ICSID Case No. ARB/05/20) [Concluded]
- Treaty: Sweden – Romania BIT 2002
  - Status/Facts: Withdrawal of previously established incentives by Romania in its EU accession process gave rise to the dispute. **Enforcement phase.** Romania stayed the enforcement in the UK.
  - Relevant Rulings/Claims: The English Court of Appeal held that as courts of a Member State to the EU, it must observe the effective application of EU state aid law. The matter is brought before the General Court of the European Union for further interpretation. At the same time, the Miculas are further pursuing enforcement and attachment of the award in the US, France, Belgium, Luxembourg and Sweden.

The cases above show that the reception of the *Achmea* judgment has been mixed. Arbitral tribunals attempt to reduce the impact of the judgment by distinguishing ECT or ICSID claims or citing timeliness issues while the EC attempts to intervene as a non-disputing party in a number of disputes. On the other hand, EU domestic courts typically give effect to the *Achmea* judgment. Thus far, the German Supreme Court set the *Achmea* award aside.<sup>7</sup> Furthermore, a Swedish court decided to stay enforcement of the award in two

---

<sup>7</sup> See the German Federal Supreme Court's decision on the set aside of the arbitral award issued in case between *Achmea v. Slovak Republic* (I ZB 2/15) of 31 October 2018.

instances.<sup>8</sup> US domestic courts, however, are yet to decide on objections to enforcement of intra-EU BIT awards.<sup>9</sup>

## 1.2. New cases initiated under intra-EU BITs subsequent to the *Achmea* judgment

23. Although the *Achmea* judgment has been generally perceived to put an end to proceedings under intra-EU BITs, new cases are still underway. 5 cases that have been initiated under intra-EU BITs after the *Achmea* judgment are listed below in chronological order.

- *LSG Building Solutions GmbH and others v. Romania* (Date Registered: 12 June 2018 / ICSID Case No. ARB/18/19)
  - Treaty: Energy Charter Treaty
  - Status/Facts: **Constitution of Tribunal**. Thomas Johnson, Jr. (Claimant Nominee) accepted his appointment as an arbitrator on 17 September 2018.
  
- *Veolia Propreté SAS v. Italy* (Date Registered: 20 June 2018 / ICSID Case No. ARB/18/20)
  - Treaty: Energy Charter Treaty
  - Status/Facts: **Constitution of Tribunal**. Laurence Boisson de Chazournes (Respondent Nominee) accepted her appointment as an arbitrator on 26 September 2018.
  
- *Bladon Enterprises Ltd v. Romania* (Date Registered: 23 August 2018 / ICSID Case No. ARB/18/30)
  - Treaty: Cyprus – Romania BIT 1991
  - Status/Facts: **Registration**. The Secretary-General registered a request for the institution of arbitration proceeding on 23 August 2018.
  
- *Oļegs Roščins v. Lithuania* (Date Registered: 16 October 2018 / ICSID Case No. ARB/18/37)
  - Treaty: Latvia – Lithuania BIT 1996
  - Status/Facts: **Registration**. The Acting Secretary-General registered a request for the institution of arbitration proceedings on 16 October 2018.
  
- *European Solar Farms v. Spain* (Date Registered: 21 December 2018 / ICSID Case No. ARB (ICSID Case No. ARB/18/45)

---

<sup>8</sup> The Svea Court granted stay of enforcement in *PL Holdings v. Poland* and *Novenergia v. Spain*. For more details see Joel Dalhquist, 'Analysis: Now that first EU court has set aside an intra-EU BIT award due to Achmea ruling, we look at the fate of three other awards.' (12 November 2018, *IA Reporter*).

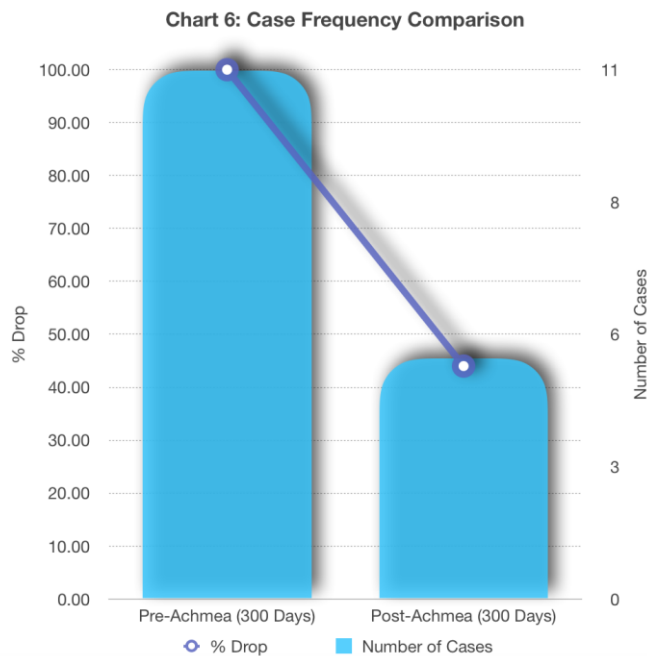
<sup>9</sup> Currently, there are at least five cases arising from intra-EU BITs that are known to be in the process of enforcement before the US courts. These are: *Masdar v. Spain*, *Eiser Infrastructure v. Spain*, *Novenergia v. Spain*, *Infrastructure Services v. Spain* (also known as *Antin v. Spain*) and *Micula v. Romania*.



- Treaty: *Energy Charter Treaty*
- Status/Facts: **Registration.** *The Secretary-General* registered a request for the institution of arbitration proceeding on 21 December 2018.

24. At least **1** case on public record (*Airbus Helicopters S.A.S. v. The Republic of Poland*) was discontinued by the claimant citing the *Achmea* judgment while reserving rights to have recourse to domestic courts and is thus excluded from the above.

25. Although new cases are being initiated, overall case numbers might be in decline. Only **5** new cases have been initiated under intra-EU BITs after the *Achmea* judgment, as opposed to **11** in the same time span (300 days) before the *Achmea* judgment. This reflects an overall decrease of **55%** in the frequency of the registered cases (Chart 6).



26. Nevertheless, many factors could be relevant for the varying frequency in the initiation of cases. Economic fluctuations, regulatory decisions, cases already underway and the specifics of each case are factors that could be considered *inter alia* as relevant to the statistics above.

27. Overall, courts and tribunals are not unequivocal in their interpretation of the *Achmea* judgment as of December 31, 2018.

## **2. Position of Third-party Funders and Legal Advisors vis-à-vis the *Achmea* Judgment**

28. This section engages in a market analysis of the effects of the *Achmea* judgment by (i) analyzing the changes in the position of third-party funders towards the funding of intra-EU BIT disputes, and (ii) making an inquiry into whether EU investors are being advised to move forward with intra-EU BIT cases and/or move their seats after the *Achmea* judgment in order to gain BIT protection elsewhere and whether they are complying with such advice, if any.
29. Through the informal evidence gathered from three conferences, a semi-structured interview, and limited results received from anonymous surveys carried out in relation to the above inquiry, no major changes to the position of third-party funders or legal advisors are observed following the *Achmea* judgment. The statistical and factual analysis in the previous section is also in compliance with this finding.
30. The *Achmea* judgment seems to be considered as a quantifiable risk factor, rather than an impediment to arbitration proceedings. Where intended benefits outweigh potential risks, some legal advisors and third-party funders are likely to advise to initiate or fund cases.
31. Law firms that participated in the survey confirmed that they have already advised their clients to move their seat, and at least one client followed such advice to eliminate the risks associated with the *Achmea* judgment.
32. Third-party funders that participated in the survey consider the *Achmea* judgment to be a material factor in the decision-making process. A third-party funder further indicated that they would not fund intra-EU BIT cases unless brought under the ICSID Convention or the ECT.
33. Below is a detailed breakdown of the survey/interview results, with content and information on the inquiries made.

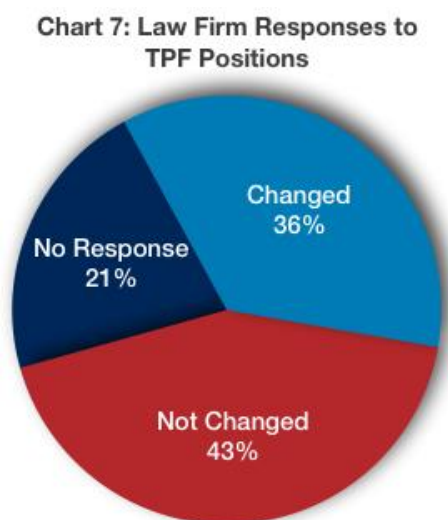
### **2.1. Analysis of the changes in the position of third-party funders towards funding intra-EU BIT disputes**

34. This sub-section pertains to analyzing changes in the position of third-party funders towards the funding of intra-EU BIT disputes.
35. For the purposes of this research, a survey was sent out to third-party funders. The survey was circulated to **10** financing firms located in the United Kingdom, United States, Canada and Australia which are engaged in third-party/litigation funding. Specifically, it was addressed to **10** individuals who have executive roles in order to prevent overlapping data. **1** of those individuals representing a major third-party funder has agreed to

participate in the survey. The responses to the survey were strictly anonymous.

36. The questions of the survey were the following, (i) whether the third-party funder ever funded an investor in arbitration proceedings against the State; (ii) whether funding intra-EU BIT disputes was an important part of third-party funder's litigation funding operations; (iii) how many intra-EU BIT arbitration proceedings the third-party funder funded; (iv) whether the third-party funder ever refused to fund an investor from an EU Member State in intra-EU arbitration proceedings because of the *Achmea* judgment; (v) in case the third-party funder were to be approached by an EU investor to fund intra-EU arbitration proceedings, whether the *Achmea* judgment would play a material role in their decision-making process; (vi) whether the third-party funder considers the *Achmea* judgment to have a significant impact on the number of intra-EU arbitration funding requests and (vii) whether the third-party funder would still consider funding intra-EU BIT arbitration proceedings after the *Achmea* judgment.
37. For reference, a copy of the full survey is attached herein as an Annex to this Report. [Annex III: Surveys]
38. According to the responses given by the participant, the participant funded investment arbitration disputes before. The participant considers intra-EU third-party funding to be an important part of their funding business. The participant funded intra-EU disputes before, in an undisclosed total number of cases. The participant refused cases in light of the *Achmea* judgment.
39. Further, the participant considers the *Achmea* judgment as a material factor in their decision of funding intra EU BIT cases. The participant considers that the number of intra-EU funding requests has dropped after the *Achmea* judgment. The participant would still consider funding intra-EU arbitration proceedings after the *Achmea* judgment.
40. Due to the limited response to the survey, an informal interview was further arranged with a representative of a third-party funder. During this interview, the representative suggested that third-party funders may consider funding intra-EU BIT disputes provided that they are brought under either the ICSID Convention or the ECT. Furthermore, the representative remarked that only the proceedings in which the award can later be enforced outside of the EU may be considered for potential funding.
41. Based on the responses above, third-party funding of intra-EU BIT based disputes brought under the ICSID Convention or the ECT may continue following the *Achmea* judgment insofar as the award can potentially be enforced outside of the EU. In any event, the *Achmea* judgment is considered to be a material negative factor in the third-party funders' decision-making process.

42. On a further note, law firms' responses to the same are divided. Out of the **14** participants who agreed to take part in the survey as of 31 December 2018 (see section 3.2 below) in relation to a question regarding the position of third-party funders, **5** participants observed a change; **6** participants did not notice any change, **3** participants did not respond to the question (Chart 7).

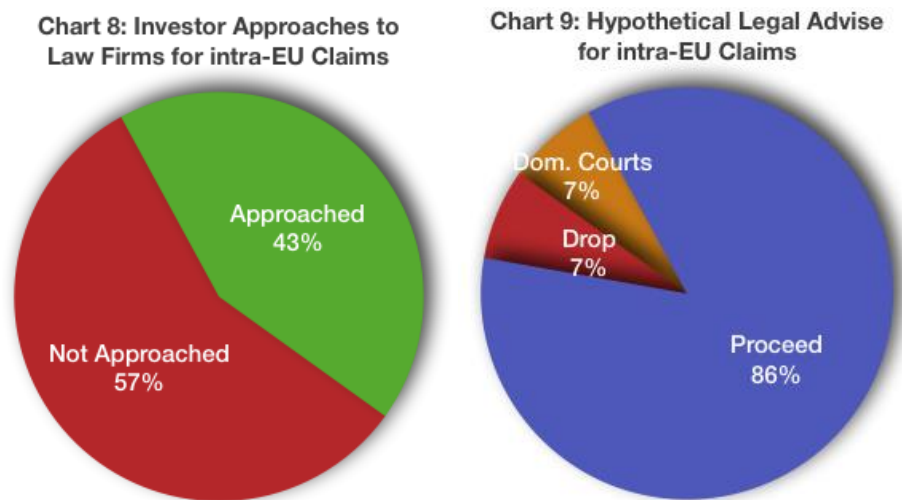


## **2.2. Analysis of the changes in the position of legal advisors towards new cases brought under intra-EU BITs**

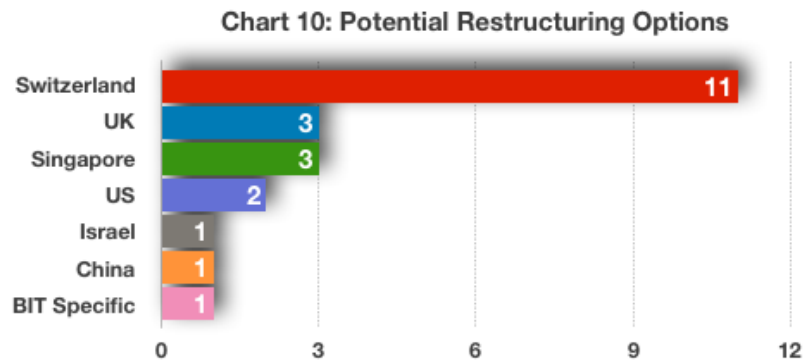
43. This sub-section pertains to assessing the position of legal advisors to new intra-EU BIT cases and whether EU investors are being advised to move their seats after the *Achmea* judgment in order to gain BIT protection, and whether they follow such advice if any.
44. For purposes of this research, a survey was circulated to **89** law firms and barrister chambers in Europe and the US that are on record to represent investors in intra-EU BIT cases. Specifically, it was addressed to **89** individual members of these law firms on partner or associate level in order to prevent overlapping data. As of 31 December 2018, **14** of those individuals have agreed to participate in the survey. The responses to the survey were strictly anonymous.
45. The questions of the survey were the following, (i) whether the law firm has been approached by an investor from an EU Member State after the *Achmea* judgment regarding the initiation of investment arbitration proceedings under intra-EU BITs; (ii) what the law firm's hypothetical legal advice would be if they were approached by an investor from an EU Member State to bring intra-EU arbitration proceedings after the *Achmea* judgment; (iii) whether the law firm ever advised an EU Member State to move their seat after the *Achmea* judgment; (iv) whether an investor acted upon such advice; (v) what would be the country of choice for purposes of

restructuring, if any and (vi) whether the law firm is aware of any differences in the position of third-party funders towards funding intra-EU arbitration proceedings after the *Achmea* judgment.

46. For reference, a copy of the full survey is attached herein as Annex to this Report. [Annex III: Surveys]
47. According to the responses given by the participants, **6** participants were approached by investors after the *Achmea* judgment seeking a remedy for breach of an intra-EU BIT. **8** participants were not approached by investors regarding the same (Chart 8). **12** participants would advise moving forward with the case on such occasion, **1** participant would consider all provided options namely, to move forward with the case, to drop the case and to seek protection in national courts and **1** participant did not respond to the question (Chart 9).



48. Further, **4** participants have advised an investor from an EU Member State to move their seat after the *Achmea* judgment. **2** investors already acted upon such advice. Regarding the country of choice for restructuring **11** participants would advise investors to move to Switzerland; **3** participants would advise investors to move to the UK; **3** participants would advise investors to move to Singapore; **2** participant would advise investors to move to the US; **1** participant would advise investors to move to Israel; **1** participant would advise investors to move to China; **1** participant would advise to investors to move depending on the BIT (Chart 10). The total number of answers exceed the number of participants as the question was formed as a multiple-choice question.



49. Moreover, as indicated earlier **5** participants did notice a policy change of third-party funders towards funding intra-EU investment disputes after the *Achmea* judgment, while **6** did not notice any change in the position of third-party funders. **3** participants did not answer the question.
50. Based on the responses above, legal advisors seem to still advise investors to pursue intra-EU BIT cases to the extent clients would follow-up. Further, a number of law firms would advise their clients to move their seats after the *Achmea* judgment to take advantage of extra-EU BITs. The Chairman of a Luxembourg-based energy company already publicly declared their intention to move their headquarters during a recent conference if the *Achmea* judgment is not reversed.

## Annex I – The Project

### Analysing the Implications of the *Achmea* Judgment of the ECJ on Intra-EU Investment Arbitration

**Beneficiary:** Ministry of Finance of the Slovak Republic

#### **Project Description:**

On 6 March 2018, the Court of Justice of the European Union (CJEU) rendered its judgement in the *Slovak Republic v. Achmea B.V.* case, concluding that the arbitration clause contained in Article 8 of the Netherlands-Slovakia Bilateral Investment Treaty (BIT) was incompatible with the principle of autonomy of EU law under the TFEU. This judgment is likely to have a significant impact on investment arbitration under intra-EU BITs at large.

Being a party to the *Achmea* proceedings, as well as having signed and ratified several intra-EU BITs, the government of Slovakia takes particular interest in post-*Achmea* intra-EU investment arbitration. As such, it would like a confidential, legally succinct and easily readable memo containing:

- 1) a list of new cases initiated under intra-EU BITs after the *Achmea* judgment of the CJEU dated 6 March 2018, if any;
- 2) the status of pending cases under intra-EU BITs;
- 3) an analysis of changes in the position of third-party funders towards the funding of intra-EU BITs disputes;
- 4) an inquiry into whether EU investors are being advised to move their seats after the *Achmea* judgment in order to gain BIT protection and whether they are doing so.

#### **Background Information:**

*Slovak Republic v. Achmea BV* (ECJ Case C284/16) (available at <http://curia.europa.eu/juris/document/document.jsf?text=&docid=199968&pageIndex=0&doclang=EN&mode=req&dir=&occ=first&part=1&cid=404057>)

## Annex II – The List of Cases

- a. The list of cases with important developments under intra-EU treaties relevant to the *Achmea* judgment as of 31 December 2018

CASES WITH IMPORTANT DEVELOPMENTS					
No.	Case Title / Date	BIT	Status	Amount Claimed	Notes
1	Gabriel Resources Ltd. and Gabriel Resources (Jersey) v. Romania (Date Registered: July 30, 2015 / ICSID Case No. ARB/15/31)	UK-Romania BIT 1996 / Canada-Romania BIT 2011	Jurisdiction/Merits Phase [Document Production]	3285.7 mln EUR	Details in Report
2	Novenergia II - Energy & Environment (SCA) (Grand Duchy of Luxembourg), SICAR v. The Kingdom of Spain, SCC Case No. 2015/063 [Concluded] [ECT]	ECT	Enforcement/Setting Aside Phase	61.3 mln EUR (53.3 mln EUR awarded)	Details in Report
3	Masdar Solar & Wind Cooperatief U.A. v. Kingdom of Spain (Date Registered: February 11, 2014 / ICSID Case No. ARB/14/1)	ECT	Enforcement Phase	250 mln EUR (64.5 mln EUR awarded)	Details in Report



<b>4</b>	Antin Infrastructure Services Luxembourg S.à.r.l. and Antin Energia Termosolar B.V. v. Kingdom of Spain (Date Registered: November 22, 2013 / ICSID Case No. ARB/13/31)	ECT	Rectification Phase	196 mln EUR (112 mln EUR awarded)	Details in Report
<b>5</b>	Edenred S.A. v. Hungary (Date Registered: September 9, 2013 / ICSID Case No. ARB/13/21)	France-Hungary BIT 1986	Annulment Phase	No information available (23 mln EUR awarded)	Details in Report
<b>6</b>	Le Chèque Déjeuner and C.D Holding Internationale v. Hungary (Date Registered: December 23, 2013 / ICSID Case No. ARB/13/35)	France-Hungary BIT 1986	Enforcement Phase	No information available	Details in Report
<b>7</b>	Georg Gavrilovic and Gavrilovic d.o.o. v. Republic of Croatia (Date Registered: December 21, 2012 / ICSID Case No. ARB/12/39)	Austria-Croatia BIT 1997	No information available	198.2 mln EUR (20.2 mln EUR awarded)	Details in Report
<b>8</b>	Vattenfall AB and others v. Federal Republic of Germany (Date Registered: May 31, 2012 / ICSID Case No. ARB/12/12)	ECT	Jurisdictional Phase (Further Objections)	4,700 mln EUR	Details in Report

<b>9</b>	United Utilities (Tallinn) B.V. and Aktsiaselts Tallinna Vesi v. Republic of Estonia (Date Registered: October 24, 2014 / ICSID Case No. ARB/14/24)	Netherlands-Estonia BIT 1992	Jurisdiction/Merits Phase	90 mln EUR	Details in Report
<b>10</b>	Marfin Investment Group Holdings SA, Alexandros Bakatselos and others v Republic of Cyprus (Date Registration: September 27, 2013 ICSID Case No. ARB/13/27)	Cyprus-Greece BIT 1992	Confidential	1,050 mln EUR	Details in Report
<b>11</b>	Dan Cake (Portugal) S.A. v. Hungary (Date Registered: April 19, 2012 / ICSID Case No. ARB/12/9)	Hungary-Portugal BIT 1992	Revision Phase	47.90 mln EUR	Details in Report
<b>12</b>	Achmea B.V. (formerly Eureko B.V.) v. Slovak Republic (PCA Case No. 2008-13)	Czech and Slovak Republic – Netherlands BIT 1991	Concluded	65 mln EUR (22 mln EUR awarded)	Details in Report
<b>13</b>	Ioan Micula, Viorel Micula, S.C. European Food S.A., S.C. Starmill S.R.L. and S.C. Multipack S.R.L. v. Romania, (Date Registered: October 13, 2005 / ICSID Case No. ARB/05/20)	Sweden-Romania BIT 2002	Enforcement Phase	734 mln EUR (102.4 mln EUR awarded)	Details in Report

14	AS Norvik Banka (Latvian), Grigory Guselnikov (British), Yulia Guselnikova (British), Alexander Guselnikov (British), Aglaya Guselnikova (British), Pyotr Guselnikov (British) v. Latvia (Date Registered: December 28, 2017 / ICSID Case No. ARB/17/47)	Latvia-UK BIT	Jurisdiction Phase [No Decision Rendered]	No information available	Details in Report
----	--	---------------	---	--------------------------	-------------------

b. The list of pending ICSID cases under intra-EU treaties relevant to the *Achmea* judgment as of 31 December 2018

<b>PENDING ICSID CASES</b>					
<b>No.</b>	<b>Case Title / Date</b>	<b>BIT</b>	<b>Status</b>	<b>Amount Claimed</b>	<b>Notes</b>
<b>1</b>	European Solar Farms v. Spain (Date Registered: 21 December 2018 / ICSID Case No. ARB(ICSID Case No. ARB/18/45)	<b>ECT</b>	Jurisdiction Phase	No information available	No information re <i>Achmea</i>
<b>2</b>	Oļegs Roščins (Latvia) v. Lithuania (Date Registered: October 16, 2018 / ICSID Case No. ARB/18/37)	Latvia-Lithuania BIT	Jurisdiction Phase	No information available	No information re <i>Achmea</i>
<b>3</b>	Bladon Enterprises Ltd (Cyprriot), Germen Properties Ltd (Cyprriot) v. Romania (Date Registered: August 23, 2018 / ICSID Case No. ARB/18/30)	Cyprus-Romania BIT	Jurisdiction Phase	No information available	No information re <i>Achmea</i>
<b>4</b>	Veolia Propreté SAS (French) v. Italian Republic (Date Registered: June 20, 2018 / ICSID Case No. ARB/18/20)	ECT	Jurisdiction Phase	220.3 mln EUR	No information re <i>Achmea</i>
<b>5</b>	LSG Building Solutions GmbH (Austrian) and others v. Romania (Date Registered: June 12, 2018 / ICSID Case No. ARB/18/19)	ECT	Jurisdiction Phase	250 mln EUR	No information re <i>Achmea</i>

<b>6</b>	ACF Renewable Energy Limited (Maltese) v. Republic of Bulgaria (Date Registered: February 14, 2018 / ICSID Case No. ARB/18/19)	ECT	Jurisdiction Phase	No information available	No information re <i>Achmea</i>
<b>7</b>	Erste Group Bank AG (Austrian), Steiermärkische Bank und Sparkassen AG (Austrian), Erste & Steiermärkische Bank d.d. (Croatian) v. Croatia (Date Registered: December 29, 2017 / ICSID Case No. ARB/17/49)	Austria-Croatia BIT	Jurisdiction Phase [No Decision Rendered]	150 mln EUR	No information re <i>Achmea</i>
<b>8</b>	AS Norvik Banka (Latvian), Grigory Guselnikov (British), Yulia Guselnikova (British), Alexander Guselnikov (British), Aglaya Guselnikova (British), Pyotr Guselnikov (British) v. Latvia (Date Registered: December 28, 2017 / ICSID Case No. ARB/17/47)	Latvia-UK BIT	Jurisdiction Phase [No Decision Rendered]	No information available	Details in Report

9	DCM Energy GmbH & Co. Solar 1 KG (German), DCM Energy GmbH & Co. Solar 2 KG (German), Hannover Leasing Sun Invest 2 Spanien Beteiligungs GmbH (German), Hannover Leasing Sun Invest 2 Spanien GmbH & Co. KG (German), Edisun Power Europe A.G. (Swiss) v. Kingdom of Spain (Date Registered: October 31, 2017 / ICSID Case No. ARB/17/41)	ECT	Jurisdiction Phase	No information available	No information re <i>Achmea</i>
10	Addiko Bank d.d. (Croatian), Addiko Bank AG (Austrian) v. Republic of Croatia (Date Registered: September 27, 2017 / ICSID Case No. ARB/17/37)	Austria-Croatia BIT	Jurisdiction Phase [No Decision Rendered]	No information available	No information re <i>Achmea</i>
11	Raiffeisenbank Austria d.d. (Croatian), Raiffeisen Bank International AG (Austrian) v. Republic of Croatia (Date Registered: [X] / ICSID Case No. ARB/17/34)	Austria-Croatia BIT	Merits Phase	No information available	No information re <i>Achmea - Challenge to S. Alexandrov rejected</i>
12	Razvoj Golf D.O.O. (Croatian), Elitech B.V. (Dutch) v. Republic of Croatia (Date Registered: September 6, 2017 / ICSID Case No. ARB/17/32)	Croatia-Netherlands BIT	Jurisdiction Phase [No Decision Rendered]	500 mln EUR	No information re <i>Achmea - Challenge to B. Stern rejected</i>

<b>13</b>	Kintyre Kft (Hungarian), Inicia Zrt (Hungarian), Magyar Farming Company Ltd (British) v. Hungary (Date Registered: August 1, 2017 / ICSID Case No. ARB/17/27)	Hungary-UK BIT	Jurisdiction Phase [No Decision Rendered]	No information available	Non-Disputing Party Application
<b>14</b>	Portigon AG (German) v. Spain (Date Registered: May 22, 2017 / ICSID Case No. ARB/17/15)	ECT	Jurisdiction Phase	No information available	No information re <i>Achmea</i>
<b>15</b>	Rockhopper Italia S.p.A., Rockhopper Mediterranean Ltd, and Rockhopper Exploration Plc (United Kingdom) v. Italian Republic (Date Registered: May 19, 2017 / ICSID Case No. ARB/17/14)	ECT	Jurisdiction Phase [No Decision Rendered]	No information available	No information re <i>Achmea</i>
<b>16</b>	Bank of Cyprus Public Company Limited (Cypriot) v. Hellenic Republic (Date Registered: February 2, 2017 / ICSID Case ARB/17/4)	Cyprus-Greece BIT	Jurisdiction Phase [No Decision Rendered]	No information available	Non-Disputing Party Application

17	VC Holding II S.a.r.l. (Luxembourg), CIC Renewable Energies Italy GmbH (German), Enernovum Asset 1 GmbH (German), SolEs Zarasol GmbH (German), SolEs XX Projekt GmbH (German), SolEs XXI Projekt GmbH (German), SolEs XXII Projekt GmbH (German), SolEs XXIII Projekt GmbH (German), Enernovum GmbH (German), Foresight European Solar 2 Ltd. (British), Foresight Luxembourg Solar 4 S.a.r.l. (Luxembourg), Foresight Luxembourg (VCT) 2 S.a.r.l. (Luxembourg) v. Italy (Date Registered: December 6, 2016 / ICSID Case ARB/16/39)	ECT	Jurisdiction Phase	No information available	No information re <i>Achmea</i>
18	Zagrebačka Banka d.d. (Croatian), UniCredit Bank Austria AG (Austrian) v. Republic of Croatia (Date Registered: September 16, 2016 / ICSID Case ARB/16/31)	Austria-Croatia BIT 1997	Jurisdiction Phase	No information available	Non-Disputing Party Application
19	Amlyn Holding B.V. (Dutch) v. Republic of Croatia (Date Registered: August 17, 2016 / ICSID Case No. ARB/16/28)	ECT	Jurisdiction Phase	No information available	Non-Disputing Party Application



<b>20</b>	Cordoba Beheer B.V. (Dutch), Cross Retail S.L. (Spanish), Sevilla Beheer B.V. (Dutch), Spanish project companies (Spanish) v. Spain (Date Registered: /ICSID Case No. ARB/16/27)	ECT	Jurisdiction / Merits Phase (Jurisdiction Phase)	20.5 mln EUR	No information re <i>Achmea</i>
<b>21</b>	ČEZ, a.s. (Czech) v. Republic of Bulgaria (Date Registered: July 26, 2016 / ICSID Case ARB/16/24)	ECT	Jurisdiction Phase [No Decision Rendered]	No information available	No information re <i>Achmea</i>
<b>22</b>	Nova Group Investments, B.V. (Dutch) v. Romania (Date Registered: July 5, 2016 / ICSID Case ARB/16/19)	Netherlands-Romania BIT 1994	Jurisdiction/Merits Phase [Provisional Measures]	No information available	No information re <i>Achmea</i>
<b>23</b>	Infracapital Solar B.V. (Dutch), Infracapital F1 S.à r.l. (Luxembourg) v. Spain (Date Registered: June 29, 2016 / ICSID Case No. ARB/16/18)	ECT	Jurisdiction/Merits Phase [Document Production]	No information available	No information re <i>Achmea</i>
<b>24</b>	Gilatz Spain SL (Spanish), Mr. Aharon Naftali Biram (German), Redmill Holdings Ltd (British), Sun-Flower Olmeda GmbH (German) v. Spain (Date Registered: June 28, 2016 / ICSID Case No. ARB/16/17)	ECT	Jurisdiction/Merits Phase [Post-Hearing Brief]	60 mln EUR	No information re <i>Achmea</i>

<b>25</b>	ESPF Beteiligungs GmbH (German), ESPF Nr. 2 Austria Beteiligungs GmbH (Austrian), InfraClass Energie 5 GmbH (German) v. Italian Republic (Date Registered: March 8, 2016 / ICSID Case ARB/16/5)	ECT	Jurisdiction/Merits Phase [Hearing Prep]	No information available	No information re <i>Achmea</i>
<b>26</b>	UAB Vilniaus Energija (Lithuanian), Veolia Baltics and Eastern Europe S.A.S. (French), Veolia Environnement S.A. (French), UAB Litesko (Lithuanian) v. Lithuania (Date Registered: February 10, 2016 / ICSID Case ARB/16/3)	France-Lithuania BIT 1992	Jurisdiction/Merits Phase [CM for Jurisdiction-Reply on Merits]	100 mln EUR	No information re <i>Achmea</i>
<b>27</b>	Eskosol S.p.A. in liquidazione (Italian) v. Italian Republic (Date Registered: December 22, 2015 / ICSID Case No. ARB/15/50)	ECT	Jurisdiction/Merits Phase	No information available	No information re <i>Achmea</i>

28	CNP Asfaltikes Praktoriakes Ergasies S.A. (Greek), CNP Zois S.A. (Greek), Domissima S.A. (Greek), Eltek S.A. (Greek), Global Equity Investments S.A. (Luxembourg), Ilektra Adamantidou (Greek), Maria Alamanidou (Greek), Theodoros Adamakopoulos (Greek), Vasileios Adamopoulos (Greek), Vinez S.A. (Greek) v. Republic of Cyprus (Date Registered: December 17, 2015 / ICSID Case No. ARB/15/49)	BLEU-Cyprus BIT 1991 / Greece-Cyprus BIT 1992	Jurisdiction Phase	No information available	Non-Disputing Party application [Granted]
29	Landesbank Baden-Württemberg and others (Germany) v. Kingdom of Spain (Date Registered: November 12, 2015 / ICSID Case No. ARB/15/45)	ECT	Jurisdiction/Merits Phase	482.5 mln EUR	No information re <i>Achmea</i>
30	Watkins Holdings S.à r.l. and others (Luxembourg, Netherlands) v. Kingdom of Spain (Date Registered: November 4, 2015 / ICSID Case No. ARB/15/44)	ECT	Jurisdiction/Merits Phase [Post-Hearing Brief]	120.8 mln EUR	No information re <i>Achmea</i>

<b>31</b>	Hydro Energy 1 S.à r.l. and Hydroxana Sweden AB (Luxembourg, Sweden) v. Kingdom of Spain (Date Registered: October 19, 2015 / ICSID Case No. ARB/15/42)	ECT	Jurisdiction/Merits Phase [Post-Hearing Brief]	133.1 mln EUR	No information re <i>Achmea</i>
<b>32</b>	Belenergia S.A. (Luxembourg) v. Italian Republic (Date Registered: September 22, 2015 / ICSID Case No. ARB/15/40)	ECT	Jurisdiction/Merits Phase	No information available	Non-Disputing Party application
<b>33</b>	SolEs Badajoz GmbH (Germany) v. Kingdom of Spain (Date Registered: August 24, 2015 / ICSID Case No. ARB/15/38)	ECT	Jurisdiction Phase	97.7 mln EUR	No information re <i>Achmea</i>
<b>34</b>	Silver Ridge Power BV (Netherlands) v. Italian Republic (Date Registered: August 11, 2015 / ICSID Case No. ARB/15/37)	ECT	Jurisdiction/Merits Phase	No information available	Non-Disputing Party application
<b>35</b>	OperaFund Eco-Invest SICAV PLC and Schwab Holding AG (Malta, Switzerland) v. Kingdom of Spain (Date Registered: August 11, 2015 / ICSID Case No. ARB/15/36)	ECT	Jurisdiction/Merits Phase [Post-Hearing Brief]	42.8 mln EUR	No information re <i>Achmea</i>

<b>36</b>	E.ON SE, E.ON Finanzanlagen GmbH and E.ON Iberia Holding GmbH (Germany) v. Kingdom of Spain (Date Registered: August 10, 2015 / ICSID Case No. ARB/15/35)	ECT	Jurisdiction/Merits Phase	324.7 mln EUR	Non-Disputing Party application [Granted]
<b>37</b>	Cavalum SGPS, S.A. (Portugal)) v. Kingdom of Spain (Date Registered: August 4, 2015 / ICSID Case No. ARB/15/34)	ECT	Jurisdiction/Merits Phase [Post-Hearing Brief]	60 mln EUR	No information re <i>Achmea</i>
<b>38</b>	Gabriel Resources Ltd. and Gabriel Resources (Jersey) v. Romania (Date Registered: July 30, 2015 / ICSID Case No. ARB/15/31)	UK-Romania BIT 1996 / Canada-Romania BIT 2011	Jurisdiction/Merits Phase [Document Production]	3285.7 mln EUR	Details in Report
<b>39</b>	KS Invest GmbH and TLS Invest GmbH (Germany) v. Kingdom of Spain (Date Registered: June 16, 2015 / ICSID Case No. ARB/15/25)	ECT	Jurisdiction/Merits Phase	80 mln EUR	No information re <i>Achmea</i> - <i>G. Born resigned from the Tribunal</i>
<b>40</b>	Mathias Kruck and others v. Kingdom of Spain (Date Registered: June 4, 2015 / ICSID Case No. ARB/15/23)	ECT	Jurisdiction/Merits Phase	67.4 mln EUR	No information re <i>Achmea</i> - <i>G. Born resigned from the Tribunal</i>

<b>41</b>	Cube Infrastructure Fund SICAV (France, Luxembourg) and others v. Kingdom of Spain (Date Registered: June 1, 2015 / ICSID Case No. ARB/15/20)	ECT	Jurisdiction/Merits Phase	63.8 mln EUR	No information re <i>Achmea</i>
<b>42</b>	ENERGO-PRO a.s. (Czech) v. Republic of Bulgaria (Date Registered: May 26, 2015 / ICSID Case No. ARB/15/19)	Czech-Bulgaria BIT 1999 / ECT	Jurisdiction/Merits Phase	No information available	No information re <i>Achmea</i>
<b>43</b>	BayWa r.e. renewable energy GmbH and BayWa r.e. Asset Holding GmbH (Germany) v. Kingdom of Spain (Date Registered: May 8, 2015 / ICSID Case No. ARB/15/16)	ECT	Jurisdiction/Merits Phase [Quantification of Costs]	61.9 mln EUR	No information re <i>Achmea</i>
<b>44</b>	9REN Holding S.a.r.l v. Kingdom of Spain (Date Registered: April 20, 2015 / ICSID Case No. ARB/15/15)	ECT	Jurisdiction/Merits Phase [Post-Hearing Brief]	52.2 mln EUR	No information re <i>Achmea</i>
<b>45</b>	B3 Croatian Courier Coöperatief U.A. (Netherlands) v. Republic of Croatia (Date Registered: February 3, 2015 / ICSID Case No. ARB/15/5)	Croatia-Netherlands BIT 1998	Jurisdiction Phase	53 mln EUR	No information re <i>Achmea</i>
<b>46</b>	STEAG GmbH (Germany) v. Kingdom of Spain (Date Registered: January 21, 2015 / ICSID Case No. ARB/15/4)	ECT	Jurisdiction/Merits Phase	96.6 mln EUR	Non-Disputing Party application

<b>47</b>	Stadtwerke München GmbH, RWE Innogy GmbH, and others (Germany) v. Kingdom of Spain (Date Registered: January 7, 2015 / ICSID Case No. ARB/15/1)	ECT	Jurisdiction/Merits Phase	423 mln EUR	Admissibility of new document [Likely NDP application]
<b>48</b>	RWE Innogy GmbH and RWE Innogy Aersa S.A.U. (Germany) v. Kingdom of Spain (Date Registered: December 23, 2014 / ICSID Case No. ARB/14/34)	ECT	Jurisdiction/Merits Phase	273 mln EUR	Admissibility of new document [Likely NDP application]
<b>49</b>	Ioan Micula, Viorel Micula and others (Sweden) v. Romania (Date Registered: November 24, 2014 / ICSID Case No. ARB/14/29)	Swedish-Romania BIT 1992	Jurisdiction Phase	No information	No information re <i>Achmea</i> [Separate from the other Micula case]
<b>50</b>	United Utilities (Tallinn) B.V. and Aktsiaselts Tallinna Vesi (Netherlands) v. Republic of Estonia (Date Registered: October 24, 2014 / ICSID Case No. ARB/14/24)	Netherlands-Estonia BIT 1992	Jurisdiction/Merits Phase	90 mln EUR	Non-Disputing Party application - [15 pages limit granted]
<b>51</b>	Sodexo Pass International SAS (French) v. Hungary (Date Registered: August 15, 2014 / ICSID Case No. ARB/14/20)	France-Hungary BIT 1986	Jurisdiction/Merits Phase [Close to Conclusion]	No information available	Non-Disputing Party application + [Late Jur. Obj.]

<b>52</b>	RENERGY S.à r.l. (Luxembourg) v. Kingdom of Spain (Date Registered: August 1, 2014 / ICSID Case No. ARB/14/18)	ECT	Jurisdiction/Merits Phase [Document Production]	206 mln EUR	No information re <i>Achmea</i>
<b>53</b>	Cyprus Popular Bank Public Co. Ltd. (Cyprus) v. Hellenic Republic (Date Registered: July 16, 2014 / ICSID Case No. ARB/14/16)	Cyprus-Greece BIT 1992	Jurisdiction/Merits Phase	1000 mln EUR	No information re <i>Achmea</i>
<b>54</b>	InfraRed Environmental Infrastructure GP Limited and others (United Kingdom) v. Kingdom of Spain (Date Registered: July 3, 2014 / ICSID Case No. ARB/14/12)	ECT	Jurisdiction/Merits Phase [Post-Hearing Brief]	92 mln EUR	No information re <i>Achmea</i>
<b>55</b>	NextEra Energy Global Holdings B.V. and NextEra Energy Spain Holdings B.V. (Netherlands) v. Kingdom of Spain (Date Registered: May 23, 2014 / ICSID Case No. ARB/14/11)	ECT	Jurisdiction/Merits Phase [Quantification of Costs]	393.6 mln EUR	No information re <i>Achmea</i>
<b>56</b>	Blusun S.A., Jean-Pierre Lecorcier and Michael Stein (Belgium, France, Germany) v. Italian Republic (Date Registered: February 21, 2014 / ICSID Case No. ARB/14/3)	ECT	Annulment Phase	187.8 mln EUR (0.29 awarded for costs)	The tribunal rejected intra-EU objection



<b>57</b>	Eiser Infrastructure Limited and Energía Solar Luxembourg S.à r.l. (Luxembourg, United Kingdom) v. Kingdom of Spain (Date Registered: December 23, 2013 / ICSID Case No. ARB/13/36)	ECT	Annulment Phase	256 mln EUR (128 mln EUR awarded)	EC submitted Non-Disputing Party Application / Enforcement in the US
<b>58</b>	MOL Hungarian Oil and Gas Company Plc (Hungary) v. Republic of Croatia (Date Registered: December 5, 2013 / ICSID Case No. ARB/13/32)	ECT	Jurisdiction/Merits Phase	No information available	Non-Disputing Party Application
<b>59</b>	Antin Infrastructure Services Luxembourg S.à.r.l. and Antin Energia Termosolar B.V. (Luxembourg, Netherlands) v. Kingdom of Spain (Date Registered: November 22, 2013 / ICSID Case No. ARB/13/31)	ECT	Rectification Phase	196 mln EUR (112 mln EUR awarded)	Details in Report / Enforcement in the US
<b>60</b>	RREEF Infrastructure (G.P.) Limited and RREEF Pan-European Infrastructure Two Lux S.à r.l. (Luxembourg, United Kingdom) v. Kingdom of Spain (Date Registered: November 22, 2013 / ICSID Case No. ARB/13/30)	ECT	Merits Phase	441 mln EUR	The tribunal rejected intra-EU objection ruling ECT prevails over EU Law - The Tribunal denied EC to intervene twice

<b>61</b>	Edenred S.A. (French) v. Hungary (Date Registered: September 9, 2013 / ICSID Case No. ARB/13/21)	France-Hungary BIT 1986	Annulment Phase	No information available (23 mln EUR awarded)	Details in Report
<b>62</b>	EVN AG (Austria) v. Republic of Bulgaria (Date Registered: July 19, 2013 / ICSID Case No. ARB/13/17)	Austria-Bulgaria BIT 1997 / ECT	Jurisdiction/Merits Phase	No information available	Likely Non-Disputing Party Application
<b>63</b>	Impresa Grassetto S.p. A., in liquidation (Italy) v. Republic of Slovenia (Date Registered: June 4, 2013 / ICSID Case No. ARB/13/10)	Slovenia-Italy BIT 2000	Jurisdiction/Merits Phase [Award Written]	No information available	No information re <i>Achmea</i>
<b>64</b>	UAB E energija (Lithuania) v. Republic of Latvia (Date Registered: October 15, 2012 / ICSID Case No. ARB/12/33)	Latvia-Lithuania BIT 1996	Annulment Phase	9.80 mln EUR (1.60 mln EUR awarded)	No information re <i>Achmea</i>
<b>65</b>	Vattenfall AB and others (Sweden) v. Federal Republic of Germany (Date Registered: May 31, 2012 / ICSID Case No. ARB/12/12)	ECT	Jurisdictional Phase (Further Objections)	4,700 mln EUR	Details in Report
<b>66</b>	Dan Cake (Portugal) S.A. v. Hungary (Date Registered: April 19, 2012 / ICSID Case No. ARB/12/9)	Hungary-Portugal BIT 1992	Revision Phase	47.90 mln EUR	Details in Report

- c. The list of concluded ICSID cases under intra-EU treaties relevant to the *Achmea* judgment as of 31 December 2018 with developments in the last two years

CONCLUDED ICSID CASES					
No.	Case Title / Date	BIT	Status	Amount Claimed	Notes
1	ENGIE SA, GDF International SAS and ENGIE International Holdings BV v. Hungary (ICSID Case No. ARB/16/14)	ECT	Settled	642 mln EUR	No information re <i>Achmea</i>
2	B.V. Belegging-Maatschappij "Far East" v. Republic of Austria (ICSID Case No. ARB/15/32)	Malta-Austria BIT	No information	200 mln EUR	No information re <i>Achmea</i>
3	Masdar Solar & Wind Cooperatief U.A. v. Kingdom of Spain (Date Registered: February 11, 2014 / ICSID Case No. ARB/14/1)	ECT	Enforcement Phase	250 mln EUR (64.5 mln EUR awarded)	Details in Report
4	Le Chèque Déjeuner and C.D Holding Internationale v. Hungary (Date Registered: December 23, 2013 / ICSID Case No. ARB/13/35)	France-Hungary BIT 1986	Enforcement Phase	No information available	Details in Report
5	Marfin Investment Group Holdings SA, Alexandros Bakatselos and others v Republic of Cyprus (Date Registration: September 27, 2013 ICSID Case No. ARB/13/27)	Cyprus-Greece BIT 1992	Confidential	1,050 mln EUR	Details in Report / <i>Achmea</i> related jurisdictional arguments rejected / Award unpublished

<b>6</b>	Georg Gavrilovic and Gavrilovic d.o.o. v. Republic of Croatia (Date Registered: December 21, 2012 / ICSID Case No. ARB/12/39)	Austria-Croatia BIT 1997	No information	198.2 mln EUR (20.2 mln EUR awarded)	Details in Report
<b>7</b>	Marco Gavazzi and Stefano Gavazzi v. Romania (Date Registered: August 27, 2012 / ICSID Case No. ARB/12/25)	Italy-Romania BIT	No information	30 mln EUR	No information re <i>Achmea</i>
<b>8</b>	Ioan Micula, Viorel Micula, S.C. European Food S.A, S.C. Starmill S.R.L. and S.C. Multipack S.R.L. v. Romania, (Date Registered: October 13, 2005 / ICSID Case No. ARB/05/20)	Sweden-Romania BIT 2002	Enforcement Phase	734 mln EUR (102.4 mln EUR awarded)	Details in Report / Challenged before UK Court for providing State Aid

d. List of pending non-ICSID cases under intra-EU treaties relevant to the *Achmea* judgment as of 31 December 2018

PENDING NON-ICSID CASES					
No.	Case Title / Date	BIT	Status	Amount Claimed	Notes
1	Fynerdale Holdings B.V. (Netherlands) v. Czech Republic (Date Commencement: December 19, 2017 / PCA Case No. 2018-18)	Netherlands-Czech Republic	Jurisdictional Phase	96 mln EUR	<i>Orego Vicuna's passing away delay the proceedings</i>
2	FREIF Eurowind (United Kingdom) v. Kingdom of Spain (SCC Case No. 060/2017)	ECT	Jurisdiction and Merits Phase [Confidential]	53 mln EUR	No information re <i>Achmea</i>
3	Triodos SICAV II (Luxembourg) v. Kingdom of Spain (SCC Case No. 194/2017)	ECT	Jurisdiction and Merits Phase [Confidential]	No data available	No information re <i>Achmea</i>
4	Slot Group a.s. (Czech Republic) v. Republic of Poland (PCA Case No. 2017-10)	Czech Republic – Poland BIT 1993	Jurisdiction and Merits Phase [Confidential]	No data available	No information re <i>Achmea</i>
5	Spółdzielnia Pracy Muszynianka (Polish) v. Slovak Republic (Date: 2016 / Not Public [PCA])	Poland-Slovakia BIT 1994	Jurisdiction and Merits Phase [Confidential]	75 mln EUR	No information re <i>Achmea</i>
6	Sun Reserve Luxco Holdings SRL (Luxembourg) v. Italy (SCC Case No. 132/2016)	ECT	Jurisdiction and Merits Phase [Confidential]	No information available	No information re <i>Achmea</i>

<b>7</b>	EDF Energies Nouvelles S.A. (France) v. Kingdom of Spain (2016)	ECT	Jurisdiction and Merits Phase [Confidential]	52.80 mln EUR	No information re <i>Achmea</i>
<b>8</b>	Green Power K/S and Obton A/S (Denmark) v. Kingdom of Spain (SCC Case No. 135/2016)	ECT	Jurisdiction and Merits Phase [Confidential]	76.10 mln EUR	No information re <i>Achmea</i>
<b>9</b>	A.M.F. Aircraftleasing Meier & Fischer GmbH & Co. KG (Germany) v. Czech Republic (Notice of Dispute: February 1, 2016)	Czech Republic – Germany BIT 1990	Jurisdiction and Merits Phase [Confidential]	109.7 mln EUR	No information re <i>Achmea</i>
<b>10</b>	Darley Energy Plc (United Kingdom) v. Republic of Poland, 2016, UNCITRAL, PCA	Poland – United Kingdom BIT 1987	Jurisdiction and Merits Phase [Confidential]	1,400 mln EUR	No information re <i>Achmea</i>
<b>11</b>	Greentech Energy Systems and Novenergia (Denmark, Luxembourg) v. Italy (SCC Case No. 095/2015)	ECT	Jurisdiction and Merits Phase [Confidential]	No information available	No information re <i>Achmea</i>
<b>12</b>	Alten Renewable Energy Developments BV (Netherlands) v. Kingdom of Spain (SCC Case No. 036/2015)	ECT	Jurisdiction and Merits Phase [Confidential]	59.40 mln EUR	No information re <i>Achmea</i>
<b>13</b>	CEF Energia BV (Netherlands) v. Italian Republic (SCC Case No. 158/2015)	ECT	Jurisdiction and Merits Phase [Confidential]	No information available	No information re <i>Achmea</i>

<b>14</b>	Foresight Luxembourg Solar 1 S. Á.R1., Foresight Luxembourg Solar 2 S.Á.R.L., Greentech Energy System A/S, GWM Renewable Energy I S.P.A and GWM Renewable Energy li S.P.A (Luxembourg, Denmark, Italy) v. Kingdom of Spain (SCC Case No. 50/2015)	ECT	Jurisdiction and Merits Phase [Confidential]	50 mln EUR	No information re <i>Achmea</i>
<b>15</b>	WCV Capital Ventures Cyprus Limited and Channel Crossings Limited (Cyprus) v. The Czech Republic, 2015, UNCITRAL, PCA	Cyprus – Czech Republic BIT	Partial Award On Jurisdiction dated 2018 [Confidential]	36.1 mln EUR	No information re <i>Achmea</i>
<b>16</b>	GPF GP S.à.r.l (Luxembourg) v. Republic of Poland, SCC Case No. V 2014/168	BLEU-Poland BIT 1987	Jurisdictional Phase	16.6 mln EUR	No information re <i>Achmea</i>
<b>17</b>	Natland Investment Group N.V. (The Netherlands), (2) Natland Group Limited (Cyprus), (3) G.I.H.G. Limited (Cyprus), (4) Radiance Energy Holding S.à.r.l. (Luxembourg) v. The Czech Republic (Date Registered: May 8, 2013 / PCA Case No. 2013-35)	Czech Republic - Netherlands BIT 1991 / Cyprus - Czech Republic BIT 2001 / BLEU - Czech Republic BIT 1989 / ECT	Merits Phase	79.3 mln EUR	EC attempts to file a NDP submission – denies “Pay to play”
<b>18</b>	CSP Equity Investment Sarl (Luxembourg) v. Kingdom of Spain (SCC Case No. 094/2013)	ECT	Jurisdiction and Merits Phase [Confidential]	840 mln EUR	No information re <i>Achmea</i>

<b>19</b>	Voltaic Network GmbH (Germany) v. The Czech Republic (2013)	Czech Republic – Germany BIT 1990  ECT	Jurisdiction and Merits Phase [Confidential]	No information available	No information re <i>Achmea</i>
<b>20</b>	I.C.W. Europe Investments Limited (United Kingdom) v. The Czech Republic (2013)	Czech Republic – United Kingdom BIT 1990  ECT	Jurisdiction and Merits Phase [Confidential]	No information available	No information re <i>Achmea</i>
<b>21</b>	Photovoltaik Knopf Betriebs-GmbH (Germany) v. The Czech Republic (2013)	Czech Republic – Germany BIT 1990  ECT	Jurisdiction and Merits Phase [Confidential]	No information available	No information re <i>Achmea</i>
<b>22</b>	WA Investments-Europa Nova Limited (Cyprus) v. The Czech Republic (2013)	Cyprus – Czech Republic BIT 2001  ECT	Jurisdiction and Merits Phase [Confidential]	No information available	No information re <i>Achmea</i>
<b>23</b>	Juvel Ltd and Bithell Holdings Ltd. (Cyprus) v. Poland, 2013, ICC, ICC	Cyprus – Poland BIT 1992	Jurisdiction and Merits Phase [Confidential]	416.7 mln USD	No information re <i>Achmea</i>
<b>24</b>	The PV Investors (Denmark, Germany, Ireland, Luxembourg, Netherlands, United Kingdom) v. Spain (PCA Case No. 2012-14)	ECT	Jurisdiction and Merits Phase [Confidential]	1,900 mln EUR	The tribunal rejected intra-EU objection ruling



e. List of concluded non-ICSID cases under intra-EU treaties relevant to the *Achmea* judgment as of 31 December 2018

CONCLUDED NON-ICSID CASES					
No.	Case Title / Date	BIT	Status	Amount Claimed	Notes
1	Ivan Peter Busta and James Peter Busta v. Czech Republic (SCC Case No. V 2015/014)	Czech Republic – UK BIT	No information	6 mln EUR	No information re <i>Achmea</i>
2	A11Y Ltd. v. Czech Republic (ICSID Case No. UNCT/15/1) [Additional Facility]	Czech Republic – UK BIT	No information	22.12 mln EUR	No information re <i>Achmea</i>
3	Novenergia II - Energy & Environment (SCA) (Grand Duchy of Luxembourg), SICAR v. The Kingdom of Spain, SCC Case No. 2015/063	ECT	Enforcement/Setting Aside Phase	61.3 mln EUR (53.3 mln EUR awarded)	Details in Report
4	Anglia Auto Accessories Ltd. v. Czech Republic, SCC Case No. V 2014/181	Czech Republic-UK BIT 1990	No information	1.4 mln EUR	No information re <i>Achmea</i>
5	Antaris Solar GmbH and Dr. Michael Göde v. Czech Republic, PCA Case No. 2014-01	Germany-Slovakia BIT / ECT 1990	No information	12.6 mln EUR	Principle of estoppel accepted – Czech Republic earlier waived its right to object
6	PL Holdings S.A.R.L. v. Republic of Poland (SCC Case No. V2014/163)	BLEU - Poland BIT 1987	No information	423 mln EUR (182.5 EUR awarded)	No information re <i>Achmea</i>

<b>7</b>	JSW Solar (zwei) GmbH & Co.KG, Gisela Wirtgen, Jürgen Wirtgen, and Stefan Wirtgen v. Czech Republic (PCA Case No. 2014-03)	Czech Republic – Germany BIT 1990	No information	20.2 mln EUR	No information re <i>Achmea</i>
<b>8</b>	Horthel Systems BV, Poland Gaming Holding BV and TesaBeheer BV v. Poland (PCA Case No. 2014-31)	Netherlands – Poland BIT 1992	No information	49.9 mln EUR	No information re <i>Achmea</i>
<b>9</b>	Achmea B.V. (formerly Eureko B.V.) v. Slovak Republic (PCA Case No. 2008-13)	Czech and Slovak Republic – Netherlands BIT 1991	Concluded	65 mln EUR (22 mln EUR awarded)	Details in Report / Set aside by German Supreme Court

## Annex III – Surveys conducted with Third-Party Funders and Law Firms

### The Achmea Project Third-Party Funder Survey

If any of the questions below apply to more than one case, please indicate the number in the brackets.

1. Has your company ever funded an investor in arbitration proceedings against the State?
  - a. Yes
  - b. No
  
2. Is funding intra-EU BIT disputes an important part of your litigation funding operations?
  - a. Yes
  - b. No
  
3. How many intra-EU BIT arbitration proceedings did your company fund?
  
4. Has your company ever refused to fund an investor from an EU Member State in intra-EU arbitration proceedings judgment *because of* the *Achmea* judgment?
  - a. Yes
  - b. No
  
5. In case your company is approached by an EU investor to fund intra-EU arbitration proceedings, would the *Achmea* judgment play a material role in your decision-making process?
  - a. Yes
  - b. No
  
6. Do you consider the *Achmea* judgment to have had a significant impact on the number of intra-EU arbitration funding requests?
  - a. Yes
  - b. No
  
7. Will you still consider funding intra-EU arbitration proceedings after the issuance of the *Achmea* judgment?
  - a. Yes
  - b. No

## The Achmea Project Law Firm Survey

If any of the questions below apply to more than one case, please indicate the number in the brackets.

1. Have you been approached by an investor from an EU Member State after the *Achmea* judgment regarding the initiation of investment arbitration proceedings under intra-EU BITs?
  - a. Yes
  - b. No
  
2. If you were to be approached by an investor from an EU Member State after the *Achmea* judgment regarding the initiation of investment arbitration proceedings under intra-EU BITs, what would be your legal advice?
  - a. To drop the case
  - b. To move forward with the case under the intra-EU BIT
  - c. To seek protection in national courts
  
3. Has your firm ever advised an investor from an EU Member State to move their seat after the *Achmea* judgment?
  - a. Yes [\_\_]
  - b. No
  
4. If your firm advised an investor from an EU Member State to move their seat after the *Achmea* judgment, did the investor act upon your advice?
  - a. Yes [\_\_]
  - b. No
  
5. If the investor acted upon your advice and moved their seat outside the EU or is in the process of doing so, what would be the country of choice?
  - a. United Kingdom [\_\_]
  - b. Switzerland [\_\_]
  - c. The other EFTA countries (Iceland, Norway, Liechtenstein) [\_\_]
  - d. China [\_\_]
  - e. Singapore [\_\_]
  - f. Hong Kong [\_\_]

- g. UAE []
- h. United States []
- i. Canada []
- j. Other []

6. Have you noticed any difference in the position of third-party funders towards funding intra-EU arbitration proceedings *after* the *Achmea* judgment?

- a. Yes
- b. No